

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

74-1261

United States Court of Appeals

FOR THE SECOND CIRCUIT

SAMUEL TITO WILLIAMS,

Plaintiff-Appellee,

against

THE CITY OF NEW YORK,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

ADRIAN P. BURKE,

Corporation Counsel of

The City of New York,

Attorney for Defendant-Appellant,

Municipal Building,

New York, New York 10007.

566-4810

HARRY H. LIPSIG,

Attorney for Plaintiff-Appellee,

100 Church Street,

New York, New York 10007.

732-9000



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
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SAMUEL TITO WILLIAMS,
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against

THE CITY OF NEW YORK,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Docket Entries

DATE

PROCEEDINGS

July 29, 1966—Filed complaint and issued summons.

August 4, 1966—Filed summons and ret—Served City of NY
August 1, 1966.

November 23, 1966—Filed deft's Answer and jury demand.

January 24, 1973—Before Carter, J. Trial begun.

Jan. 26, 1973—Trial continued and concluded. Deft's motion
to dismiss 64 Civ. 2767 granted. (Trial together with 64
Civ. 2767).

January 30, 1973—Filed Judgment. Ordered that plaintiff
Samuel Tito Williams have judgment against the deft. The
City of New York in the amt. of \$120,000. Complaint dis-
missed. Clerk. Docketed as Judgment #73,166. Ent. on
docket January 31, 1973. (mailed notice).

February 20, 1973—Filed Bill of Costs. Costs taxed at \$38.12.
Docketed on Judgment #73,166.

November 15, 1973—Filed Opinion 40016 The City of New
York has moved to set aside the jury's verdict. For the rea-
sons indicated. The Court finds there is a sufficient basis

Docket Entries

DATE

PROCEEDINGS

in this record for the jury's verdict. The City's motion, therefore, is in all respects denied. So ordered—Carter, J. (m/)

December 14, 1973—Filed defts. notice of appeal to the USCA for the 2nd Circuit from Judgment entered on January 30, 1973 and Opinion #40016 filed on November 15, 1973 denying deft's motion to set aside the verdict.—Copy mailed to Harry H. Lipsig, Esqs., 100 Church St., NYC.

April 1974—Filed transcript of record of proceedings, dated January 24, 26—1973.

January 22, 1974—Filed stip. and order that the time to docket the appeal is ext. to February 25, 1974—Carter, J.

Notice of Appeal

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

66 Civil 2356

SAMUEL TITO WILLIAMS,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

SIRS:

NOTICE IS HEREBY GIVEN that the defendant hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment entered herein on January 30, 1973 and the order entered herein on or about November 14, 1973 denying defendant's motion to set aside the verdict and this appeal is taken from each and every part of said order and judgment as well as from the whole thereof.

Dated: New York, N. Y.
December 14, 1973

Yours, etc.,

NORMAN REDLICH,
Corporation Counsel,
Attorney for Defendant,
Office and P. O. Address,
Municipal Building,
New York, N. Y. 10007.

By STANLEY BUCHSBAUM
Stanley Buchsbaum
Assistant Corporation Counsel

To:

HARRY H. LIPSIG
Attorney for Plaintiff
100 Church Street
New York, N. Y.

Judgment Appealed From

Original Judgment Missing From District Court File

CLERK'S OFFICE

UNITED STATES DISTRICT COURT

FOR THE

S. D. N. Y.

Civil Action No. 66 Civil 2356

SAMUEL TITO WILLIAMS,

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

There was entered on the docket January 30, 1973 a judgment.

JOHN LIVINGSTON
Clerk

PROCEEDINGS

July 29, 1966—Filed complaint and issued summons.

August 4, 1966—Filed summons and ret—Served City of NY
August 1, 1966.

November 23, 1966—Filed deft's answer and jury demand. JLR

January 24, 1973—Before Carter, J. Trial begun.

January 26, 1973—Trial continued and concluded. Deft's. motion to dismiss 64 Civ. 2767 granted. (Tried together with 64 Civ. 2767).

January 30, 1973—Filed Judgment. Ordered that plaintiff Samuel Tito Williams have judgment against the deft. The City of New York in the amt. of \$120,000; Complaint dismissed.

Judgment Appealed From

Clerk. Docketed As Judgment #73,166. Ent. on docket January 31, 1973. (mailed notice).

February 20, 1973—Filed Bill of Costs. Costs taxed at \$38.12. Docketed On Judgment #73, 166.

November 15, 1973—Filed Opinion #40016 . . . The City of New York has moved to set aside the jury's verdict. For the reason indicated . . . The Court finds there is a sufficient basis in this record for the jury's verdict. The City's motion, therefore, is in all respects denied. So ordered—Carter, J. (m/r)

December 14, 1973—Filed defts. notice of appeal to the USCA for the 2nd Circuit from Judgment entered on January 30, 1973 and Opinion #40016 filed on November 15, 1973 denying deft's motion to set aside the verdict.—copy mailed to Harry H. Lipsig, Esqs.,
100 Church St., NYC.

January 4, 1974—Filed transcript of accord of proceedings, dated January 24, 26, 1973.

January 23, 1974—Filed stip. and order that the time to docket the appeal is ext. to February 25, 1974—Carter, J.

Bill of Costs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

On Jud. #73,166

Civil Action File No. 66 Civ. 2356

Judgment having been entered in the above entitled action on the 31st day of January, 1973, against the City of New York the clerk is requested to tax the following as costs:

BILL OF COSTS

Fees of the clerk	\$15.00
Fees of the marshal	3.12
Fees of the court reporter for all or any part of the transcript necessarily ob- tained for use in the case	—
Fees and disbursements for printing ..	—
Fees for witnesses (itemized on reverse side)	—
Fees for exemplification and copies of papers necessarily obtained for use in the case	0
Docket fees under 28 U. S. C. 1923 ...	20.00
Costs incident to taking of depositions	—
Cost as shown on Mandate of Court of Appeals	0
Total	\$38.12

Bill of Costs

STATE OF NEW YORK }
 COUNTY OF NEW YORK } ss.:

I, HARRY H. LIPSIG, ESQ. do hereby swear that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy hereof was this day mailed to Norman Redlich, Corporation Counsel, Municipal Building, New York, N. Y. with postage fully prepaid thereon.

Please take notice that I will appear before the Clerk who will tax said costs on the 20th day of February, 1973 at 10:00 A.M.

.....
 Attorney for Plaintiff

Subscribed and sworn to before me this 14th day of February
 A. D. 1973 at .

[NOTARIAL STAMP]
 (Illegible)

.....
 Notary Public

Costs are hereby taxed in the amount of \$38.12 this 20th day of February, 1973, and that amount included in the judgment.

THOMAS E. ANDREWS,
 Clerk.

By THOMAS M. NAUGHTON,
 Deputy Clerk.

11:00 A.M.—February 20, 1973—No appearance on opposition.

THOMAS E. ANDREWS,
 Acting Clerk.

Summons

UNITED STATES DISTRICT COURT

FOR THE

SOUTHERN DISTRICT OF NEW YORK

Torts 566142

66 Civil Action File No. 2356

[SAME TITLE]

To the above named Defendant:

You are hereby summoned and required to serve upon HARRY H. LIPSIG, Esq., plaintiff's attorney, whose address 100 Church Street, New York 7, New York an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JOHN J. OLEAR, JR.
Clerk of Court.

E. SWANCIGER
Deputy Clerk.

Date: New York, July 29, 1966

[SEAL OF COURT]

Complaint

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

[SAME TITLE]

Plaintiff by HARRY H. LIPSIG, his attorney, alleges:
1st CAUSE OF ACTION:

1. Plaintiff is a resident of the State of Georgia, residing at Fort Benning, Georgia.

2. At all times hereinafter mentioned, upon information and belief, the defendant was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

3. By reason of the foregoing variance of residence, there is a diversity of citizenship and the amount in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

4. Heretofore and on or about August 10, 1965 plaintiff duly presented in writing to the Comptroller of said defendant the claim hereinafter set forth and upon which this action is founded for adjustment.

5. More than thirty (30) days have elapsed since such presentation of said claim, but said defendant has not adjusted the same.

6. This action was commenced within one year and three months after the said causes of action accrued.

7. Upon information and belief, at all times hereinafter mentioned, and for some time prior thereto, all the members of the Police Department were and still are agents, servants and/or employees of defendant and under its supervision, direction and control, and said department was and still is a functioning branch

Complaint

and arm of the City of New York, duly organized for that purpose, amongst any and all other purposes, to protect the public and the property of the residents of the City of New York.

8. On or about September 8, 1947 at or about 2:30 A.M. defendant, through its agents, servants and/or employees, with force and arms, wrongfully and unlawfully took into custody plaintiff, then 18 years of age, and maliciously, wrongfully and unlawfully compelled plaintiff to submit to be searched and to go with them to his home and then to the 73rd precinct station house, all against plaintiff's will and without just or probable cause.

9. Defendant, through members of its Police Department, wrongfully, maliciously and unlawfully detained plaintiff against his will at said station house for approximately 34 hours, during which time in complete disregard of plaintiff's constitutional rights, defendant unlawfully, illegally, maliciously, wantonly and wilfully subjected plaintiff to cruel and inhuman treatment, continuously interrogating him, holding him incommunicado and failing to advise him of his legal right to counsel or of his privilege to remain silent, and through such means induced him to falsely confess to a crime that he did not commit.

10. On or about September 9, 1947 at or about 12:30 P.M. defendant maliciously, wrongfully, unlawfully and without any just or probable cause arrested plaintiff and had him arraigned for the crime of murder in the first degree.

11. Thereafter, defendant caused to be issued an indictment against plaintiff charging him with murder in the first degree.

12. Defendant, its agents, servants and employees caused plaintiff to be falsely arrested and did falsely arrest plaintiff; falsely accused plaintiff of committing a beating and participating in a holdup, and subsequent murder; wrongfully coerced and extracted from plaintiff an illegal, unlawful and baseless confession in order to procure his conviction of the crime of murder in the first degree and through said Police Department

Complaint

unlawfully forced the baseless confession from plaintiff with the intent of procuring a conviction of plaintiff of the crime of murder in the first degree despite his actual innocence thereof; caused plaintiff to be maliciously prosecuted; caused plaintiff to be persecuted and subjected to indignities; caused plaintiff to be falsely tried and convicted and incarcerated in prison for many years; did intentionally and maliciously assemble and present at his trial certain material evidence which was known to be false; did maliciously and intentionally suppress evidence with the intent of procuring the conviction of plaintiff despite his actual innocence; did wantonly, recklessly and unlawfully arrest and cause long imprisonment of plaintiff with wanton disregard for his innocence; did permit certain false and misleading evidence and maliciously assembled and presented certain material and inconsistent evidence at the trial of plaintiff for murder in the first degree, knowing of the falsity thereof and took no action to correct same; and procured a witness at the trial to falsely identify plaintiff as the person who committed the fatal beating.

13. All of the said malicious and unlawful acts aforesaid were against the will of plaintiff and committed by defendant through members of its Police Department without just and probable cause and with a callous attitude toward and in complete disregard of the legal and constitutional rights of plaintiff.

14. When plaintiff was arrested he informed defendant, its agents, servants and/or employees that he had not committed any crime or offense, but defendant failed to pay any attention to what plaintiff said.

15. By reason of the defendant's unlawful conduct, on or about January 22, 1948 plaintiff was found guilty of first degree murder in the County Court of Kings County and thereafter on or about March 2, 1948 plaintiff was sentenced to death by electrocution.

16. Defendant wrongfully procured the conviction and sentencing of plaintiff and the ensuing long imprisonment of plaintiff.

Complaint

17. By reason of the foregoing, plaintiff was incarcerated in Sing Sing prison in Ossining, New York, following his conviction and sentence to execution, was thereafter placed in the death house at Sing Sing and remained there for approximately 22 months. During that period he suffered untold agony and torment. Plaintiff's sentence was thereafter commuted to life imprisonment and he was thereafter transferred from prison to prison where he remained until his release in or about November 1963.

18. Said wrongful arrest, detention and imprisonment for approximately 16 years was made by defendant without justification and without any reasonable cause for belief that plaintiff was in fact guilty of said crime.

19. A writ of habeas corpus was sustained by the United States Circuit Court of Appeals on or about October 4, 1963 and the judgment of conviction of plaintiff was vacated on the grounds that the confession of plaintiff was coerced and was inadmissible in evidence.

20. On or about February 17, 1964 the Supreme Court of the United States refused to review the decision of the United States Circuit of Appeals for the Second Circuit sustaining plaintiff's habeas corpus proceeding.

21. By reason of the foregoing, plaintiff suffered extreme and agonizing mental and emotional pain, anguish, torture and distress; impairment of mental, nervous and bodily health; degradation, shame and loss of reputation; wide dissemination through newspapers and other media of communication of libelous and slanderous statements concerning plaintiff and the publication of his photograph in connection therewith; forced for almost 16 years to be incarcerated in prison and deprived of his liberty, and to associate with drug addicts, vicious criminals, sex perverts and the lowest form of human beings, all with the knowledge that plaintiff was innocent of the charge for which he was in prison; deprivation for 16 years of personal freedom and the opportunity to engage in normal pursuits as a free member of

Complaint

society; loss of broadening contacts and educational opportunities; loss of earnings, damage and injury to his good name and reputation; put up to ridicule and injured in his credit and prevented from attending to his necessary affairs, and subjected to great expense in the procuring of counsel in his defense and taking of appeals from the wrongful judgment of conviction and clearing his name.

22. By reason of the foregoing, plaintiff sustained damage in the amount of \$2,000,000.00.

2ND CAUSE OF ACTION

23. On or about April 19, 1947 in the Borough of Brooklyn, during the commission of a burglary a 15 year old girl was fatally beaten and the said crime received considerable notariety in various communication medias including the newspapers, radio and television.

24. Upon information and belief the police had no evidence as to the individual that committed the aforesaid crime of murder, except that the brother of the slain girl was an eye witness to the said slaying and told the police and the various communication medias that the killer was a Caucasian.

25. Upon information and belief thereafter various communication media and high officials of defendant and of the Police Department of the City of New York were critical of the detectives and police investigating the said crime and demanded, required, directed and ordered that the perpetrator of the crime be apprehended.

26. Upon information and belief at all times herein mentioned members of the Police Department along with others entered into a conspiracy and did conspire together to falsely accuse plaintiff of the crime of murder in the first decree as aforesaid, and to falsely and maliciously prosecute, wrongfully arrest and imprison the plaintiff for many years.

Complaint

27. At the time of the conspiracy to falsely and maliciously prosecute, persecute, arrest and imprison plaintiff, defendant knew or should have known that the said arrest, imprisonment, malicious prosecution and persecution were wrongful and not in good faith, and wilfully and intentionally and maliciously intended to injure plaintiff.

28. As a result of the aforesaid conspiracy and the maliciousness of defendant, its servants, agents and/or employees, plaintiff was subjected by defendant, its servants, agents and/or employees and/or others under the supervision and responsibility of defendant, to arrest and trial and for many years incarcerated in Sing Sing Prison.

29. At the time of said conspiracy and at all times hereinafter mentioned, defendant, its agents, servants and/or employees, knew or should have known that plaintiff was innocent of the charge of murder in the first degree and said conspiracy was unlawful and in furtherance of false and malicious charges of a crime which defendant, its servants, agents and/or employees, knew or should have known to be false and untrue in the exercise of reasonable care.

30. Defendant did not act in good faith and the said arrest, commitment, detention and long imprisonment were malicious and defendant acted maliciously, improperly, unlawfully and wilfully without probable cause that plaintiff had committed a crime of murder in the first degree, when in fact they knew full well that plaintiff was innocent thereof.

31. Upon information and belief defendant, through its servants, agents and/or employees in furtherance of the said conspiracy did present to the Grand Jury the said coerced and false confession, which confession affected the action of the Grand Jury in that the Grand Jury in that the Grand Jury in reliance upon such fraudulent confession indicted plaintiff for the crime of murder in the first degree.

Complaint

32. As a result of defendant's wrongful conduct, plaintiff was arrested and deprived of his liberty and arraigned before the County Court in the County of Kings to answer said charge of murder in the first degree, and plaintiff was compelled to and did attend in person and in public before the said County Court and pleaded not guilty to the said charge and was compelled to and was imprisoned pending the trial of said cause.

33. Thereafter plaintiff was duly tried upon the said charge and indictment in the County Court of the County of Kings and defendant, its agents, servants and/or employees in furtherance of the aforesaid conspiracy did present before the Court and jury the coerced, fraudulent confession and did procure a a result thereof a verdict of guilty of murder in the first degree against plaintiff.


34. On or about October 4, 1963 the United States Court of Appeals in and for the Second Circuit held that on the undisputed facts plaintiff's confession was the product of coercion and as a matter of law the introduction of the said confession was a violation of his constitutional rights and that, therefore, his trial was not conducted in accordance with the standard of due process of law guaranteed by the 14th Amendment and order that a writ of habeas corpus be issued.

35. On or about February 17, 1964 the Supreme Court of the United States denied a writ of certiorari to review the decision of the United States Court of Appeals for the Second Circuit granting plaintiff's application for a writ of habeas corpus.

36. By reason of the foregoing plaintiff sustained damage in the sum of \$2,000,000.00.

3RD CAUSE OF ACTION:

37. Defendant falsely accused plaintiff of committing the crime of murder in the first degree during the course of a burglary in that he fatally beat to death a 15 year old girl and that in otherwise he was guilty of murder in the first degree.



Complaint

38. The issuance of said indictment, subsequent processes and subsequent proceedings were unlawful, wilful, malicious and wrongful and made for the purpose of procuring the arrest and conviction of plaintiff of the crime of murder in the first degree.

39. Defendant knew full well that plaintiff was innocent and obtained unlawful and forced confessions, and said indictment, subsequent processes and further subsequent proceedings were wrongfully used for a purpose and in a manner not legally justifiable.

40. All of the said malicious and unlawful acts aforesaid were against the will of the plaintiff and were committed by defendant, its agents, servants and/or employees without just and probable cause.

41. As a result thereof plaintiff was incarcerated in Sing Sing Prison in Ossining, New York, for approximately 16 years.

42. On or about July 2, 1965 the indictment was dismissed by an order of the Supreme Court of the State of New York, Kings County.

43. By reason of the foregoing, plaintiff sustained damage in the sum of \$2,000,000.00.

WHEREFORE, plaintiff demands judgment on the 1st, 2nd and 3rd causes of action in the sum of \$2,000,000.00 together with interest, costs and disbursements of each cause of action.

HARRY H. LIPSIG

Harry H. Lipsig

Attorney for Plaintiff,

Office and P. O. Address,

100 Church Street,

Borough of Manhattan,

City of New York.

Answer By City of New York
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

The defendant, answering the complaint herein, alleges:

**AS TO THE 1ST CAUSE OF ACTION ON BEHALF
OF THE PLAINTIFF:**

FIRST: Denies having any knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs of the complaint designated "1".

SECOND: Admits each and every allegation contained in paragraph of the complaint designated "2".

THIRD: Denies each and every allegation contained in paragraph of the complaint designated "3" except that the plaintiff is suing for an amount in excess of \$10,000.00.

FOURTH: Denies each and every allegation contained in paragraphs of the complaint designated "4", "5" and "6", except that on or about the 10th day of August, 1965 and prior to the commencement of this action, a notice of claim was presented to the Comptroller of the City of New York, and that more than thirty days have elapsed since such presentation and that no adjustment thereof has been made.

FIFTH: Denies each and every allegation contained in paragraph of the complaint designated "7", except that The City of New York maintains a police department pursuant to the Charter and the Administrative Code of the City of New York.

SIXTH: Denies each and every allegation contained in paragraph of the complaint designated "8".

SEVENTH: Denies each and every allegation contained in paragraph of the complaint designated "9".

Answer By City of New York

EIGHTH: Denies each and every allegation contained in paragraph of the complaint designated "10".

NINTH: Denies each and every allegation contained in paragraph of the complaint designated "11", except the plaintiff was indicted for murder in the first degree.

TENTH: Denies each and every allegation contained in paragraph of the complaint designated "12".

ELEVENTH: Denies each and every allegation contained in paragraph of the complaint designated "13".

TWELFTH: Denies each and every allegation contained in paragraph of the complaint designated "14".

THIRTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "15".

FOURTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "16".

FIFTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "17", except that plaintiff was imprisoned in Sing Sing and subsequently released.

SIXTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "18".

SEVENTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "19", except that a writ of habeas corpus was sustained on October 4, 1963 by the United States Circuit, Court of Appeals.

EIGHTEENTH: Denies each and every allegation contained in paragraph of the complaint designated "20", except that subsequently the Supreme Court of the United States denied certiorari.

NINETEENTH: Denies each and every allegation contained in paragraph of the complaint designated "21".

Answer By City of New York

TWENTIETH: Denies each and every allegation contained in paragraph of the complaint designated "22".

AS TO THE 2ND CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF:

TWENTY-FIRST: Denies each and every allegation contained in paragraph of the complaint designated "23".

TWENTY-SECOND: Denies each and every allegation contained in paragraph of the complaint designated "24".

TWENTY-THIRD: Denies each and every allegation contained in paragraph of the complaint designated "25".

TWENTY-FOURTH: Denies each and every allegation contained in paragraph of the complaint designated "26".

TWENTY-FIFTH: Denies each and every allegation contained in paragraph of the complaint designated "27".

TWENTY-SIXTH: Denies each and every allegation contained in paragraph of the complaint designated "28".

TWENTY-SEVENTH: Denies each and every allegation contained in paragraph of the complaint designated "29".

TWENTY-EIGHTH: Denies each and every allegation contained in paragraph of the complaint designated "30".

TWENTY-NINTH; Denies each and every allegation contained in paragraph of the complaint designated "31".

THIRTIETH; Denies each and every allegation contained in paragraph of the complaint designated "32".

THIRTY-FIRST: Denies each and every allegation contained in paragraph of the complaint designated "33".

THIRTY-SECOND: Denies each and every allegation contained in paragraph of the complaint designated "34" except that a writ of habeas corpus was sustained on October 4, 1963 by the United States Circuit, Court of Appeals.

Answer By City of New York

THIRTY-THIRD: Denies each and every allegation contained in paragraph of the complaint designated "35" except that subsequently the Supreme Court of the United States denied certiorari.

THIRTY-FOURTH: Denies each and every allegation contained in paragraph of the complaint designated "36".

AS TO THE 3RD CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF:

THIRTY-FIFTH: Denies each and every allegation contained in paragraph of the complaint designated "37".

THIRTY-SIXTH: Denies each and every allegation contained in paragraph of the complaint designated "38".

THIRTY-SEVENTH: Denies each and every allegation contained in paragraph of the complaint designated "39".

THIRTY-EIGHTH: Denies each and every allegation contained in paragraph of the complaint designated "40".

THIRTY-NINTH: Denies each and every allegation contained in paragraph of the complaint designated "41".

FORTIETH: Admits each and every allegation contained in paragraph of the complaint designated "42".

FORTY-FIRST: Denies each and every allegation contained in paragraph of the complaint designated "43".

AS A FIRST SEPARATE AND DISTINCT
DEFENSE, THE DEFENDANT ALLEGES

FORTY-SECOND: That the plaintiff failed to comply with the provisions of Section 50-e of the General Municipal Law in that he failed to file his notice of claim within the time prescribed by law.

Answer By City of New York

AS A SECOND SEPARATE AND DISTINCT
DEFENSE, THE DEFENDANT ALLEGES:

FORTY-THIRD: That the plaintiff has failed to comply with the provisions of Section 50-e of the General Municipal Law and Section 394a-1.0 of the Administrative Code of the City of New York in that he failed to commence his action within the time prescribed by law.

AS A THIRD SEPARATE AND DISTINCT
DEFENSE, THE DEFENDANT ALLEGES:

FORTY-FOURTH: That the plaintiff has another action pending in this Court for the same alleged causes of action sued for in the instant action.

AS A FOURTH SEPARATE AND DISTINCT
DEFENSE TO THE CAUSES OF ACTION SET
FORTH HEREIN, THE DEFENDANT ALLEGES:

FORTY-FIFTH: At all the times mentioned in the complaint the defendant, The City of New York, maintained and operated a Police Department as provided by law and that the police officers attached to said department were obliged to detect and suppress crime and to apprehend and arrest offenders of the laws of the City and State of New York.

FORTY-SIXTH: That on September 9, 1947 Samuel Tito Williams, now the plaintiff in this action, was arrested for the killing of Selma Graff during the commission of a burglary inside premises 143 East 96th Street, in the Borough of Brooklyn, City and State of New York.

FORTY-SEVENTH: That thereafter the plaintiff was indicted by the Grand Jury of the County of Kings, charged with the crime of murder in the first degree.

FORTY-EIGHTH: That on or about the 22nd day of January, 1948 the plaintiff was convicted of the aforesaid crime after trial, and on or about the 2nd day of March, 1948, he was sentenced to be executed.

Answer By City of New York

FORTY-NINTH: That subsequently the conviction and sentence were affirmed by the Court of Appeals of the State of New York.

FIFTIETH: That on or about the 16th day of November, 1949, the sentence was commuted to life imprisonment by Governor Thomas E. Dewey.

FIFTY-FIRST: That subsequently a petition for a writ of habeas corpus was denied in the District Court of the Northern District of New York.

FIFTY-SECOND: That subsequently the Court of Appeals affirmed the order of the District Court.

FIFTY-THIRD: That on or about the 12th day of December, 1960, the Supreme Court denied the petition for a writ of certiorari.

FIFTY-FOURTH: That on or about the 29th day of March, 1962, the Court of Appeals of the State of New York denied the plaintiff's motion for reargument of the original appeal.

FIFTY-FIFTH: That on or about the 25th day of June, 1962, Supreme Court of the United States denied petition for the writ of certiorari.

FIFTY-SIXTH: That subsequently the plaintiff's petition for a writ of habeas corpus was denied in the District Court of the Southern District of New York.

FIFTY-SEVENTH: That on or about the 4th day of October, 1963, the Circuit Court of Appeals sustained the writ of habeas corpus.

FIFTY-EIGHTH: That at no time did the defendant, or any of its agents, servants and/or employees, conspire against the plaintiff or commit any of the acts alleged in the complaint, but that at all the times mentioned in the complaint, all of the acts of said agents, servants and/or employees of the defendant, were performed in good faith and with reasonable and probable cause

Answer By City of New York

in the performance of their duties as agents, servants and/or employees of the defendant.

AS AND FOR A FIFTH SEPARATE AND DISTINCT
DEFENSE TO THE CAUSES OF ACTION SET FORTH HEREIN,
THE DEFENDANT ALLEGES:

FIFTY-NINTH: All the acts of the members of the staff of the District Attorney of the County of Kings in the City and State of New York and the police officers of the defendant, The City of New York, were performed in good faith and with reasonable and probable cause in the course and exercise of their respective duties in the investigation and prosecution of the aforesaid crime.

SIXTIETH: All of the acts of the members of the staff of the District Attorney of the County of Kings, in the City and State of New York, were performed as quasi judicial officers and as such are immune from suit.

SIXTY-FIRST: All of the acts of the aforesaid police officers of the defendant, The City of New York, were performed under the orders and direction of the staff of the aforesaid District Attorney, acting as quasi judicial officers, thereby rendering the defendant immune from suit.

WHEREFORE, the the defendant demands judgment dismissing the complaint herein, with costs.

J. LEE RANKIN,
Corporation Counsel,
Attorney for Defendant,
Office & P. O. Address:
Municipal Building,
Borough of Manhattan,
New York, N. Y. 10007.

By SAUL L. COHEN
Saul L. Cohen
Assistant Corporation Counsel

Transcript of Proceeding

* * *

The Court: I would like to be clear on where we are in this case. Mr. Schwartz, would you tell me?

There are two complaints in this case, is that correct?

There is Civil action number 66/2356, and Civil action 64/2767, is that correct?

Mr. Schwartz: Yes, your Honor.

The Court: Now, are we trying both of those?

Mr. Schwartz: Yes, your Honor.

The Court: They haven't been consolidated, I gather, but they are going to be consolidated at this point?

Mr. Schwartz: Yes, sir.

The Court: Now, what is the difference between the two actions?

Mr. Schwartz: Well, of your Honor will recall, a motion was made to amend a notice of complaint [claim]*. That motion only referred to the first notice of claim and that notice of claim as far as the statute is concerned was served late.

The second notice of claim, as far as malicious prosecution is concerned, was served on time, so I don't have the time element to contend with as far as that was concerned—in order to come within the false arrest section the motion was made—as far as my assumption is concerned—before I get to that motion, that time on time with that false arrest, because I claim the section was unconstitutional, that is Section 50E of the General Municipal Law, that was a motion that your Honor was to decide whether the section was unconstitutional insofar as the time period was concerned.

The Court: Well, I think—I suppose maybe I had not done it, it had been my intention to notify you of my decision.

Mr. Walls: I received notification from your secretary.

The Court: All right. So I decided that the ordinance of the law is not my judgment unconstitutional on its face and we will proceed on the assumption it's constitutional, which as far as I

* We reproduce the minutes exactly as transcribed by the Court Reporter. Words in brackets represent what defendant's trial counsel believes to have been said.

Colloquy

understand it now means that the false arrest action is no longer before us.

* * *

The Court: Is there an objection, Mr. Walls, to consolidating these actions?

Mr. Walls: I have no objection to consolidating the two.

The Court: All right. The motion is granted to consolidate for the purpose of trial 66 Civil 2767.

All right, I'll hear you, Mr. Schwartz.

Mr. Schwartz: Your Honor, in the first numbered action, I offer the Notice of Claim that was served on the City in evidence dated May 15, 1964.

The Court: Mr. Walls?

Mr. Walls: I'm going to object to the Notice of Claim being accepted into evidence, your Honor, first on the ground it's nothing more than that self-serving declaration.

If, however, plaintiff offers to show a complaint within [compliance with] the statute, the City of New York will stipulate Notice of Claim was served on that date without conceding that it was timely. In fact, the City of New York maintains it was not timely, since it was served some five and a half months after the plaintiff was physically released from custody.

Consequently, it did not comply with the requirements of Section 50E of the General Municipal Law, which requires a Notice of Claim be served within 90 days from the date of the cause of action.

The Court: All right. The Notice of Claim insofar as it's been—what should we call this?

Mr. Schwartz: Notice of Claim, your Honor.

The Court: All right. You're offering it in evidence, I suppose, so it will be numbered Plaintiff's Exhibit number 1.

There is a Notice of Claim, as I read it, for false imprisonment and conviction.

(Plaintiff's Exhibit 1 marked for Identification and received in evidence.)

The Court: When was Mr. Williams released from custody?

Mr. Walls: November 23, 1964, I believe your Honor can [verify] that.

Colloquy

Mr. Schwartz: Released November 26th, 1966.

The Court: 1963.

Mr. Walls: 1963.

The Court: That is stipulated, as to the correct date?

Mr. Schwartz: November 26th, 1963.

The Court: It's agreed this claim is dated May 15th, 1964, and it is not within the 90 day period and, therefore, the statute allowing suits against the City——

It is, therefore, not admissible.

Mr. Schwartz: If your Honor please, may we be clear on the record? It is our contention it also sets forth an action for malicious prosecution and that would be timely even under the first one and the second one because the indictment was not dismissed until July 2nd, 1965.

The Court: All right.

Mr. Walls: Your Honor, can I be heard on that latter point concerning whether or not the first Notice of Claim, that is the notice dated May 15, 1954, [1964] sets forth a claim for malicious prosecution? If in fact it does it's a complete nullity because one of the essential elements to a cause of action for malicious prosecution is a favorable determination in favor of the plaintiff.

By counsel's own statement that didn't occur until some time after the notice was served.

The Court: I agree. The Notice of Claim is not admissible in evidence. It is not timely on either point of false arrest or malicious prosecution for the reasons stated.

Mr. Schwartz: If the Court pleases, on that latter point I take issue with counsel. As far as the malicious prosecution is concerned, we can't anticipate as far as a Notice of Claim is concerned and I would respectfully ask your Honor to reserve decision on that point.

It may become academic later on but for the time being if your Honor will reserve decision on it because when we got into the second Notice of Claim things may become more clarified.

The Court: As far as I understand the law, you're not in a position to file a claim for malicious prosecution until the proceedings have been concluded and on that basis I don't see any

Colloquy

reason for reserving decision. It is clear this was filed before the prosecution had been concluded.

It seems to me you should go to the second Notice of Claim.

Mr. Schwartz: I'll accept your Honor's ruling and protect my record.

The Court: All right, fine.

Mr. Schwartz: Now, of course, we can proceed with the trial if your Honor pleases and then we will introduce this in the second case.

Can we pick a jury first?

The Court: No, why don't you introduce that into evidence now and then we will call the jury and we will pick the jury.

Mr. Schwartz: I offer in evidence Notice of Claim served on the City of New York, on August 10th, 1965.

Mr. Walls: The City again objects, your Honor, to the accepting into evidence of the Notice of Claim dated August 9—mine doesn't have a date on it, it was verified by the plaintiff—August 9, 1965, and served on the City of New York August 10, 1965, on grounds previously stated, that it would be nothing more than a self-serving declaration.

However, the City of New York does concede that if in fact this Notice of Claim sets forth a claim for malicious prosecution it would have been timely served, it would have been within the 90 days and if the Court should so hold it would constitute compliance with the statutory prerequisites (commenced with) [required by] the statute.

The Court: Well, the Court has ruled on that. It does set forth a claim for malicious prosecution, that it is timely, and will be received in evidence.

(Plaintiff's Exhibit 2 received in evidence.)

* * *

Mr. Walls: The City has agreed to stipulate he complied with all the statutory prerequisites in connection with the statute in the second Notice of Claim, if it does state a cause of action for malicious prosecution.

* * *

Colloquy

(In robing room.)

The Court: I want to get something straightened out. I don't have before me the 1964 complaint, 64 Civil 2767. Do you have that outside?

Mr. Schwartz: I will have to look for it, your Honor, but insofar as our proceeding would that hold us up?

The Court: No, but I want to tidy up the record in any event. It seems to me that——

Mr. Schwartz: I was under the impression I submitted my pleadings on both cases.

The Court: The plaintiff was released in November of 1963?

Mr. Schwartz: Yes.

The Court: And on July 2, 1965, the indictment was dismissed?

Mr. Schwartz: Yes.

The Court: A Notice of Claim was filed on May 15, 1964, for false arrest and imprisonment?

Mr. Schwartz: Yes, sir.

The Court: An action was filed in this Court some time afterwards?

Mr. Schwartz: Yes. There is also no question as far as the City is concerned that that was timely, as far as timeliness is concerned.

The Court: May 15, 1964——

Mr. Schwartz: I'm talking about the second cause of——

The Court: No, the first.

Mr. Schwartz: I beg your pardon?

The Court: The City's claim is the May 15, 1964, action was untimely.

Mr. Walls: Notice of Claim was untimely.

The Court: Notice of Claim was untimely and I'm going to have to rule in regard to the 1964 action both in respect to the false arrest that the Notice of Claim and therefore the action was untimely because of the false arrest in both the 1964 and the subsequent action of 1966.

Mr. Schwartz: No, just a minute. If I understand your Honor clearly, I think your Honor rule on the 1964 action that that was untimely.

Colloquy

The Court: All right. Let me finish, Mr. Schwartz.

Mr. Schwartz: Excuse me, your Honor stated 1966 action—
'65—

The Court: If you listen to me I think we will get it straightened out. The 1964 action filed here goes to false arrest and imprisonment.

Mr. Schwartz: Yes.

The Court: And I'm ruling that that action as to the Notice of Claim, the action was untimely and insofar as that action alleges a malicious prosecution which is the only matter here, that it was premature and, therefore, the 1964 action is dismissed in its entirety.

Insofar as on August 10, after the indictment was dismissed on July 2, 1965, the Notice of Claim was filed on August 10, which alleges claims for false arrest and malicious prosecution.

Insofar as that action alleges a claim of malicious prosecution I rule that it's timely and the 1966 action so far as it makes the claim, the complaint on that ground, is the matter that is before the Court at the present time.

Mr. Schwartz: Yes.

The Court: All right. That is what I wanted to be clear on.

Mr. Walls: Am I to understand your Honor, that insofar as the 1966 action is concerned, if there is a cause of action there for either false arrest or false imprisonment, since the Notice of Claim proves [provisions] would still apply, that is out.

The Court: That is out. The only issue that is before the Court is the 1966 action and the only issue in the 1966 action is a complaint for malicious prosecution and that is the matter being tried at the present time.

Mr. Walls: The substance of the message your secretary I think delivered to me it would be just malicious prosecution.

The Court: Right. Since we had consolidated these two matters I wanted to be sure and be clear that what we were doing, we are doing on the 1964 action, all we have got is the 1966 malicious prosecution.

* * *

Williams—Direct

SAMUEL TITO WILLIAMS, the plaintiff herein, having been called to the stand as a witness in his own behalf, and having been first duly sworn, testified as follows:

Direct examination by Mr. Schwartz:

Q. Mr. Williams, you are the plaintiff in this case, the one who is suing? A. Yes, sir.

Q. Are you married, Mr. Williams? A. Yes, I am.

Q. Have any children? A. I have three children, sir.

Q. Three? A. Yes, sir.

Q. Mr. Williams, I want to take you back to September 8th, 1947.

How old were you then? A. I just turned 18, sir.

Q. Shortly before that had you come out of the Navy? A. Yes, sir.

Q. What kind of discharge did you get? A. I got an honorable discharge with a disability pension.

Q. What was your condition? A. I had rheumatic heart disease, sir.

Q. When you got out of the Navy, did you get a job? A. Yes, I did, sir. After a while.

Q. You recall where that was? A. I believe it was 284 Court Street, sir. I'm not positive.

Q. What were you doing there? A. I was a stock clerk, sir.

Q. About how long had you worked there? A. Around three months.

Q. What were you earning, a week? A. About \$35, just about.

Q. Then you stopped working? A. Yes, the doctor told me to stop.

Q. On September 8, 1947, did something happen to you?

* * *

Q. Mr. Williams, did something happen on that day? A. Yes, sir.

Q. At about what time? A. It was after two in the morning.

Q. What happened? A. I came out of the park, I was walk-

Williams—Direct

ing toward the local theatre on Pitkin Avenue toward my home.

Q. Mr. Williams, could you get to what happened? A. Someone called out and ran up behind me and they grabbed me and they turned me around and started searching me, started searching me under my arms and my legs down to my shoes and I asked them what was the matter, you know, why are you searching me.

He told me to shut my "damm mouth" so they told me to get in the car and I got in the car.

Q. All right, just a moment. Approximately how long after you stopped working did that occur, roughly? A. I stopped working——

Q. Was it weeks, months——A. Mcnths, sir. I stopped working, I believe it was July.

Q. How many months, roughly? A. About two months, sir.

Q. All right. Now, when you were stopped and you were searched, did any of them exhibit a warrant? A. No sir.

Q. Where did they take you from there? A. They took me to my home and they searched my house and they put my clothes and stuff in the box.

Q. Then where did they take you from there? A. They took me to the police station sir.

Q. Now, when they took you to the police station, what if anything happened? A. They took me upstairs and they handcuffed me to a radiator by the window and started asking me all sorts of questions and started knocking me in the head and beat me.

Q. They asked you questions about what? A. Burglaries, robberies, you name it, sir. All kinds of things.

Q. Yes. A. And I told them I don't know what they are talking about, I was no criminal, I don't bother nobody.

Q. Did they also during that time bringing some people up to look at you? A. Yes, they brought many, many people, sir. Many.

Q. And——A. They looked at me and said, "Not him", and walked on and that made them all the madder and they just beat me more.

Williams—Direct

Q. Now, did this happen over a period of hours? A. Over 38 hours, sir.

Q. When an individual said, "You are not the one", and they left, detectives remained with you? A. They was always with me.

Q. Now, where and how did they beat you? A. They beat me on my legs.

Q. Any other parts of your body? A. My arms, and my head. He socked me in the head. Kept on socking me in the back of my head and hit me with—it was a rubber hosing, my legs were swollen up like a peach ready to pop.

And I was hurting.

Q. Now, at times did they also take you out to places for people to look at, to see if you were the one involved, in addition to bringing people into the precinct? A. Yes, many times.

Q. And what happened? A. Everybody told them, no, they never saw me.

Q. And then they bring you back to the precinct—what would they do when they brought you back? A. They cursed me, called me "Nigger"—as black as I am, I had never in my whole life—

Q. Outside of calling you names, did they do anything? A. Beat the hell out of me, sir. They beat me, they beat me.

Q. In what way? A. Just beat me all over my body, asked me questions and just beat me, beat me.

They beat me and burned me. That was later on.

Q. Mr. Williams, did there come a time that they started to question you about the Selma Graff murder—don't shake your head, the reporter can't take it down. A. Yes.

Q. Explain that.

Mr. Walls: I object to that your Honor. I don't understand when he says "Explain that".

Mr. Schwartz: All right. I withdraw the question.

The Court: All right.

Q. When you were questioned about the Selma Graff murder, what happened? A. They asked me did I know Selma Graff.

Williams—Direct

I said I never heard of Selma Graff. I said, "Who is she". They said, "Well, she was killed". I said, "Well, I never killed nobody so why are you asking me". He said, "Well, I think you did it". I said, "I never killed nobody in my life". He says, "Shut your God damm mouth" and, you know, I sat there and I shut up. Then he asked me, "You did it, didn't you?" I said, "No sir, I didn't." He hit me on the side of my head and he grabbed me like, toward near the beltline but I didn't have no belt. No pants with no belt; and they ripped it and——

Q. What did they rip? A. Just yanked me down. He was a big man.

Q. What did he rip? A. He ripped my pants right down the front near my fly, what we call a fly.

Q. What happened then? A. He grabbed my testicles and squeezed me. I know I screamed and I know—when I woke up I had water all over me.

Q. When you woke up, you mean you were unconscious?
A. Yes, sir.

Q. Was anything done with cigarettes? A. Yes, sir.

Mr. Walls: Objection your Honor. I think I permitted counsel some [sufficient] latitude in questioning the witness. I realize it's an ordeal but——

Mr. Schwartz: I withdraw the question.

Mr. Walls: I don't think that——

Mr. Schwartz: All right, I withdraw the question.

Mr. Walls: He knows how to ask a proper question. I would just appreciate if he would——

Q. Did anything else happen——

The Court: Mr. Schwartz, when an objection is made I want you to wait until I've made a ruling on it, if you will. Now, I would appreciate it also if you would abide by, in terms of questioning the witness, I understand it is an ordeal for Mr. Williams and I'm going to have some latitude with regard to that but please keep it within bounds.

Williams—Direct

By Mr. Schwartz:

Q. Did anything else happen? A. Yes, they started asking me questions, and I said no. When I said no they brushed cigarettes on my arm, behind my neck and supposedly—he just threw the cigarette right down on my penis and burned it. I have the scar to this day. I screamed. I screamed and they just beat me more. They didn't give a damn. I don't like thinking about it.

Q. Now, up to the time that this was going on, from the time that they took you into the precinct, did you have any sleep? A. No, sir.

Q. Did you try to sleep? A. They won't let me sleep. How could I?

Q. Now, you were arrested on September 8th, about two o'clock in the morning, and when did you have any sleep before that time? A. The day before sir.

Q. That would be the morning of September 7th? A. Yes sir.

Q. And so you had no sleep during the questioning that was going on regarding the Graff murder which was the night of September 8th? A. Would you say that again.

Q. Well, they brought you to the precinct at approximately two or 2:30 in the morning of September 8, that would be a.m., and I think you said you didn't have any sleep since the day before. That would make it September 7. A. Yes, sir.

Q. So that from the morning of September 7 to the night of September 8—was it September 8 or September 9 they started questioning you? A. September 9.

Q. So in other words, then, they had you September 8 at night and then they had you September 9 in the morning and then they had you September 9, at night time.

Mr. Walls: Objection your Honor.

A. Yes.

The Court: Yes sir, Mr. Walls?

Mr. Walls: The objection is that I don't know whether it's a question, [a] series of questions, or whether counsel is testifying.

Williams—Direct

The Court: Yes, Mr. Schwartz, I think the objection is well taken.

As I said before, I know this is an ordeal for Mr. Williams but at the same time we have to get from Mr. Williams his version of this. You have to pose questions to him, not make statements. Even though this is difficult the action is brought so let's let Mr. Williams do the testifying, please.

Q. Mr. Williams, when did the detectives get around to questioning you about the Graff murder, September 8 or September 9? A. September 9.

Q. So that from September the 7th, the morning, to September the 9th, at night, when you were being questioned about the Graff murder, all of that time you had no sleep?

Mr. Walls: Objection your Honor. The witness didn't say it was the night of September 9. He said September 9th, and I'll ask the Court, please——

A. I had been there since September 7th. You know it. You know it. And I stated to September the 10th. You know that.

Q. Mr. Williams, my question to you is on September 9th when you were being questioned about the Graff murder, was it in the daytime or the night time? A. Night time sir.

Q. While you were being questioned about the Graff murder on September 9th, did the detective show you pictures of the home of Selma Graff that they told you was where she lived? A. Yes, sir. They showed me pictures of the outside of the house, the back of the house, and on the side of the alleys, and inside the apartment. That's what they showed me and he showed me, also they told me how she was killed.

Q. During that time, all that time, from the time that you were picked up, to the time that you were being questioned, about the Graff murder, were you given any food? A. He gave me one bite of a sandwich and a swallow of coke and threw the coke right in my face.

Williams—Direct

Q. And what about the sandwich? A. The sandwich he threw in the garbage, sir.

Q. Now, did there come a time during that night that they were questioning you about the Graff murder, that you were asked by the detective to write out a confession? A. Yes, sir. After he had picked me up off the floor and I was wet and he knocked me out and they sat me down in a chair and that is when he began to explain how she was killed and showed me like photos, the backyards, the alleys, and all that and he said to me, he says, "I'm tired of you saying no to me". He said, "You know I'm tired, that is all we have been hearing from you is no". He says, "You're not going to say 'no' no more". Like that. I was afraid. I was afraid to say any more. So he says, "You see that window?" I said, "Yes, sir". He said, "I'm going to throw you out of it" and he says, "Who cares about whether you die or not, you're just another black bastard goon. All I got to say is you tried to escape" He said "You understand?" I said "Yes sir". He says, "I want you to repeat what I told you". He asked me to repeat it. I did the best I could. He had me do it three times. I did the best I could. He said, "I want you to write and handed me a paper and told me what to write. I kept on writing. I would still be writing if I was there. I don't deny that. I was afraid of that man. I was afraid of them. They were big men. I was a small man, then.

Q. Now, that confession, that you wrote out, was that dictated by them? A. Yes. They told me what to write and I wrote it and then he told me he was going to call in some people and I better say just what he told me and I repeated it. I repeated it the whole night. I just kept saying the same thing over and over, the same thing. He asked me, "You did it?", and I said "Yes I did it".

Q. Now, after you wrote out that confession, did the District Attorney come in with a court reporter? A. Yes.

Q. Who was writing down what was said? A. Yes, he came in.

Q. Now, were you then asked questions by the District Attorney? A. Yes, I was asked questions, sir, and he asked me

Williams—Direct

questions and all I said was, "Yes", I agreed to everything he said. Now what he put on the paper I don't know.

Q. And a man was writing that down? A. Yes sir. It was a man there sitting there writing.

Q. All right. Now, after that was done, were you taken to the Graff house, where the murder was committed? A. Yes sir. I was.

Q. And did they take you in the house? A. When they got a chance to get me in because there were people trying to get to me. I got hit over my left shoulder with a rake.

Q. When you say people are you talking about people outside the detectives? A. Yes.

Mr. Walls: Objection your Honor.

A. People that live around the area.

Mr. Walls: Counsel is still leading the witness and the witness answers are not responsive. He was asked did they take you in the house. The question calls for a simple yes or no answer.

But counsel is definitely leading the witness your Honor.

The Court: Well, counsel is leading the witness. I think, Mr. Schwartz, that you were leading the witness more than is necessary. I think the answer is responsive. That last answer is responsive, but I think you're leading the witness more than necessary. I don't want to have to ask you to stop it any further.

Q. Now, when you got to the house, where were you taken?

A. When they finally got me inside the house, they took me in an alley.

They led me to an alley, sir.

Q. Was the alley in the house or out of the house? A. No—well, they got me in the house, yes, they took me into the back room, some back rooms.

Williams—Direct

Q. And as far as the alleys were concerned——A. They took me everywhere, around the whole house.

Q. But the alleys were not in the house, were they? A. No, that is outside the house.

Q. In just a couple of words, can you describe the scene as you approached the house with the detectives? A. Well, when I came there was all lit up, the whole area. They had big long trucks that looked like as long as this here room with flood lights. There was crowds of people and they was trying to get at me. In other words, they had to surround me to take me through the crowd.

And I only got hit—I thought I got stabbed but I got hit with a rake or something on my shoulders and they pulled me in.

Q. All right. Now, where did they take you from there? A. They took me back to the police station.

Q. Now, did there come a time when they took you some place else? A. They took me to the school and they brought a young boy out to see me and they told me to stand in the sunlight and this was up near East New York——

Q. This boy, what is his name? A. Donald Graff. That was the girl's brother.

Q. Yes. A. And they said he was the only eye witness they had and they asked Donald Graff, they looked at him and said, "Point at him, is that the man you seen" and Donald said, "No sir, no. It was a white man". So they took him aside, they rushed him off aside and moved me aside and they talked to him for a while, you know, I don't know, five minutes or so, but they talked to him and told him to come back again, "Point at him, is that the man who killed your sister?" He said "No, it was a white man". He is black—he is colored. He used the word colored and——

Q. Then, you know, you were taken back, back to the police station? A. Police station, yes, sir.

Q. How old was this Donald Graff? A. Ten years old, sir.

Q. Now, without going into any detail, did there come a time after that when you were arraigned before a magistrate? A. Yes, sir.

Williams—Direct

Q. Now the last time we had a time and date, was September 9th, when you were being questioned about the Graff murder.

A. Yes, sir.

Q. Then you were taken to the home and then to the boy. Do you have any idea about what time at night on September 9th, you went to see the house—by the way, I'll make that two questions instead of one. Do you have any idea about what time you went on September 9th to the house? A. It was at night time. I don't know. It was night.

Q. And since you stated you went to the school to see the boy——

The Court: That was the next morning.

Q. I assume that was the next day. A. Yes, sir, the morning.

Q. That would be the 10th? A. In the morning.

Q. In the morning. And if you have any recollection, when were you arraigned after that, was it a day later or two?

What is your best recollection? A. They took me back to the police station and then, I'm not positive if it was the next day in the afternoon, or that day in the afternoon, I'm not sure.

Q. All right. A. I don't remember.

Q. In any event, wasn't it before September the 10th of the afternoon? A. No, no.

Q. Okay. And when you appeared before the magistrate, was there any lawyer appearing for you? A. No, I was handcuffed to the police officer. Nobody was there. I couldn't speak to nobody. They won't let me.

Q. When you appeared before the magistrate, when you say police officers, you mean the detective? A. Yes, they told me when I get in court to shut my mouth and I did that. I didn't say nothing.

Q. Were you asked how you plead? A. They asked me but I still didn't say nothing and the court pleaded not guilty for me. I was afraid to say anything.

Q. And then you were taken away? A. Taken back to the police station.

Williams—Direct

Q. And then did there come a time after that that you appeared in another court, before Judge Leibowitz? A. Oh yes, yes, sir.

Q. Do you have any approximate recollection as to how long after that that was? A. No. Maybe a day later. I don't know sir.

Q. Now, when you appeared before Judge Leibowitz, that was a different court, correct, wasn't a magistrate? A. It was a bigger court.

Q. Bigger court. Was any lawyer with you at that time? A. No, I was with detectives.

Q. At that time was a lawyer assigned to you? A. Yes, Judge Leibowitz assigned a lawyer to me and he took a look at me and saw how it was. He said he ordered the court to take pictures of my body for my defense.

Mr. Walls: Objection your Honor, as to what Judge Leibowitz said.

The Court: I didn't hear him saying anything that Judge Leibowitz said.

Mr. Walls: He said Judge Leibowitz assigned a lawyer to him and then Judge Leibowitz said—the question was did Judge Leibowitz assign an attorney.

A Judge Leibowitz ordered pictures to be taken of the wound I had on my face that he saw.

The Court: That is what I thought I——

Mr. Walls: That is the very thing I'm objecting to.

The Court: He said Judge Leibowitz ordered pictures taken.

Mr. Walls: The fact was, he was asked did Judge Leibowitz direct you be furnished with counsel or words to that effect. The answer was yes.

He then started to volunteer about what Judge Leibowitz said about pictures.

I don't see it's relevance and I won't have an opportunity to cross examine any Judge Leibowitz and it's hearsay.

Williams—Direct

The Court: I overrule that. I think the witness testified that Judge Leibowitz ordered pictures and that part of—it's a question of action rather than statement the judge made.

It's overruled. You may continue.

By Mr. Schwartz:

Q. Were pictures eventually taken? A. The pictures of the body showing the scars, because he had saw my face swollen.

Q. After the lawyers were appointed by the court, you had a trial? A. They called it a trial, sir.

The Court: I didn't hear what you said Mr. Williams.

A. I said they called it a trial, sir. That's how I feel, inside.

I know the truth.

Q. And you were convicted? A. Yes, sir.

Q. You received a sentence of death? A. Yes, sir.

Q. Were you taken to the death house? A. Yes.

Q. About how long were you there? A. I was there two years.

Q. Now, after that, did you remain in jail, just yes or no?

A. Yes, I did sir.

Q. How long did you remain in jail altogether? A. Sixteen years, six months, twenty three days, and about twenty six minutes. I counted them.

Q. Now, did there come a time when you were let out of jail pursuant to the order of the Circuit Court of Appeals of this Circuit because they hold the confession was coerced as a matter of law?

Mr. Walls: Objection. I don't think the witness is competent to testify as to what they held.

Mr. Schwartz: I think it's a matter of record, your Honor, that he was released.

The Court: I think as a matter of fact that the confession was held to be coerced and Mr. Schwartz, it is a question you can point to the opinion of it or else Mr.

Williams—Direct

Walls will agree the witness is in no position to testify what the court held as a matter of law.

Mr. Schwartz: Do you concede that to be so?

Mr. Walls: Can I have it rephrased—do I concede what to be so, his statement, your statement, or my objection?

Mr. Schwartz: I'll reframe it.

Do you concede that the Circuit Court of Appeals of this Circuit ruled as a matter of law that his confession was coerced?

Mr. Walls: I don't know whether I would classify it as a matter of law, your Honor.

Mr. Schwartz: I just asked him to concede or not.

The Court: Mr. Schwartz, would you allow Mr. Walls to answer. You made a question to him, now allow him to answer.

Mr. Walls: I do know that they completely reviewed the facts in their case including the confession and all the testimony at the trial.

They held, if I recall the language, current standards of due process, other than [under the] standards of due process—

Mr. Schwartz: If your Honor pleases—

Mr. Walls: That the confession was coerced.

I don't know whether this was the exact term or not but in any event they held it voluntary, at least a violation of the defendant's—plaintiff's rights or due process and consequently it could not be used in any subsequent trial.

The Court: All right.

Mr. Walls: We have the opinion, your Honor, if the Court would want that.

The Court: I think as a matter of fact I go over it anyway. It seems to me that is sufficient. The question is whether it's been held coercion as a matter of law or whether it's involuntary confession or whether it's based upon the very standards and so forth and so on is some-

Williams—Direct

thing you will be able to bring out from this witness in any event. That is a question to argue, it seems to me, not on this matter in any event. I think at this point the stipulation has been the concession has been made. It is a confession held to be involuntary and the other matters we will deal with that on the question of argument, on the law. Mr. Schwartz?

Mr. Schwartz, Well, I asked the Court to take judicial notice knows that that is what the court said and I now offer to the Court the opinion of the Circuit Court of Appeals using what language and I ask your Honor—

The Court: I said to you, Mr. Schwartz, that the issue, if it is an issue, as between your views and Mr. Walls, is an issue that may be—it may have some bearing on this case as a matter of law, not on the question of facts. The facts insofar as this case is concerned at the present time the concession has been made by Mr. Walls that the confession was involuntary and coerced and under those circumstances you may proceed.

You don't have to give me that opinion. I have to take cognizance, that is the opinion of the Second Circuit, is it not?

Mr. Schwartz: Yes.

The Court: I have to take cognizance of that opinion in any event.

By Mr. Schwartz:

Q. Mr. Williams, how did you feel when you were in the death house? A. You shouldn't ask that. I was miserable.

Q. Now, after you left prison, did you try to work? A. I tried to work, I couldn't get any work.

Mr. Walls: Objection your Honor. May we approach the bench?

The Court: Yes.

(At the side bar.)

Mr. Walls: The question now appears we are going into what sort of problems he had since he got out of

Williams—Direct

prison. He is suing for malicious prosecution, the fact he was prosecuted.

Mr. Schwartz: Everything subsequent to the release from prison is a part of the cause of action for malicious prosecution.

Mr. Walls: I'm not saying it's beyond the scope of your bill. Your bill was very, very broad.

Mr. Schwartz: It concerns his ability to get a job, he can testify what he tried to do.

The Court: It seems to me that that is right, Mr. Walls.

Mr. Walls: Because the question is so broad——

The Court: He is charging malicious prosecution. He is trying to show—he is entitled to that if the allegation of malicious prosecution were to stand, then damages would be appropriate, he couldn't get a job and so forth and so on. I think that that is legitimate if that is what your objection is.

Mr. Walls: I said before the basis of my objection is—I know what his bill contains—the question was so broad I want to know whether we have any limitation on it. I didn't want to do it from the back of defense counsel's table.

The Court: Well, damages arising from virtue of this fact—one thing I did want to caution you on, I don't want you to be asking any further, if you have any questions about it, but it seems to me such questions as how did you feel in the death house and so forth and so on are really not involved. How did you expect him to feel when he was in the death house?

On the facts of the case, you have a case with enough facts without attempting to do anything further on that question and I don't want any further questioning of that kind and I don't want——

Mr. Schwartz: I left it Judge. I just asked him about his work now.

Williams—Direct

The Court: Fine, just remember, Mr. Schwartz, I don't want to be interfering with your presentation but let's keep it in bounds, both on leading questions and inflammatory questions.

(In open court.)

The Court: For the purposes of the record, I'm not clear in my own mind in terms of dates, and I don't mean by that September 9 and so forth, the years.

I'm not sure you've elicited the date, perhaps you have, if it's in the record, fine, that Mr. Williams was tried, date he was released, and now you're going into the question of his job and so forth and I think—I'm just raising that.

You can ask him the questions.

Mr. Schwartz: We had stipulated at one time, we argued the motion, and I will ask him or we can stipulate for the record the date because I don't think there is any objection.

The Court: All right.

Mr. Walls: The date of his release, counselor?

Mr. Schwartz: Yes. November 26th, 1963. Can we stipulate that for the record?

Mr. Walls: I believe we did, your Honor, but we can have the same stipulation.

The Court: I don't know. You stipulate that out but there were no dates given so far as I was concerned and I think the jury doesn't know—when was the trial, when was Mr. Williams tried?

Mr. Walls: January of 1948.

The Court: 1948, is that right?

A. Yes, it was in the late part and ended March the 2nd, sir.

The Court: But the trial began in 1948?

A. Yes.

The Court: And he was released—he was in prison from 1948 to 1963 when he was released, is that correct?

Williams—Direct

Mr. Schwartz: 1947.

The Court: Oh, yes.

Mr. Schwartz: The date of the arrest was September 8th, 1947.

The Court: All right.

By Mr. Schwartz:

Q. Mr. Williams, do you recall the date that you were released from prison? A. It was the date Kennedy was being buried, sir. President Kennedy was being buried that morning, November 26th. I believe it was that day. Same date he was being buried.

Mr. Schwartz: Will counsel stipulate it was November 26th, 1963?

Mr. Walls: I'll stipulate your Honor, of course.

The Court: All right. And you also stipulate, Mr. Walls, when the proceedings were concluded or dismissed.

Mr. Walls: The indictment, based upon the information I have, your Honor, and subject to correction by Mr. Williams, of course, I understand that the indictment was dismissed on July 2nd, 1965.

The Court: Well, that is what the plaintiff has alleged in his trial memorandum, is that stipulated?

Mr. Walls: That is so stipulated your Honor.

The Court: All right, then let's proceed.

By Mr. Schwartz:

Q. Mr. Williams, after you were released, July 2nd, 1965—A. November, 1963.

Mr. Schwartz: I beg your pardon.

A. I was released from the indictment.

The Court: The indictment was dismissed in July, 1965.

Williams—Direct

And you were released November 26th, 1963, did you make any efforts to find employment? A. Yes, but nobody would hire me sir. I tried everywhere and the minute they heard my name that was it or even went so far as to say, oh yeah, I remember you, you know, and that was it. I passed the tests, whatever they had to give me and still got thrown out.

Q. Now, Mr. Williams, did there come a time when you did have some employment? A. Yes, sir. I got a job, lawyers helped me get a job in the New York Bar Association, down on 42 West 44th Street.

Q. How long were you working there approximately? A. Two years, sir. I worked there in the library.

Q. Do you have any idea what years they were? A. About 1964 to the time I went in the Army, sir, 1965.

Q. You went back in the Army? A. I went in the Army, 1965, and came out 1969, sir. I was in the paratroopers.

Q. And what kind of discharge did you get when you came out of the Army? A. I have an honorable discharge with a disability, sir.

They had to operate on my lung.

Q. What kind of work do you do now? A. Right now I'm a painter and plasterer.

Q. Is that a regular job? A. No. It's on and off because I was an officer in the Queens Midtown Tunnel but I got carbon monoxide poisoning and the combination of factors including the fact I was told I was going to go to trial back as far as then I was also afraid that I'd get fired the minute they found it out so I left that job, too. I had to combine the two factors. If I go to trial here they would fire me and there is no——

Q. Mr. Williams, I'm trying to find an answer to the question.

This job that you have got now, is it a regular job? A. No, sir. It's on and off deal.

Q. When they have work, they call you? A. Yes, sir.

Q. All right. About how long have you been doing that? A. Since August—no, it would be——

Q. Of this year? A. No, since September because I was sick in August.

Williams—Direct

Williams—Cross

Q. Would that be of '72? A. Yes, of '72, sir.

Q. Over the period of time that you've been doing this, approximately, what would you say you would average a week?

A. According to the job if I get a job I might have an apartment, maybe a hundred dollars, or ninety, according to the job sir.

Q. Well, then, over a month's time, just to get an average, what would you make either a week or month during the time you were there, roughly. Any idea? A. About ninety to hundred a week. That's about it sir.

Q. When you got out of the Army, in '69, I think you said—— A. Yes, sir. July 9th, 1969.

Q. ——was this job and the job you said you had with the Tunnel Authority, the only two? A. No, I worked in a law firm sir.

Q. Was that one with the Bar Association? A. No. It was downtown. I took dictation off—I typed belts.

Q. And how long did you do that roughly? A. About three months. I got sick again.

Q. Three months? A. Yes sir. I get sick. My lung doesn't hold out too long, sir.

* * *

Cross-examination by Mr. Walls:

* * *

Q. After your interrogation by the police officers, when you testified to all this with your own attorney, you did eventually come before a magistrate? A. Yes, sir. They eventually took me before a magistrate.

Q. And before the magistrate, the charge for you which you were being arraigned was read out loud to you, isn't that correct, do you recall that? A. I didn't even know what the word meant.

Q. Well, they [you] did say they called your name and they told you what you were charged with, and the judge had that read to you? A. Man read out something.

Williams—Cross

Q. And the judge asked you how you plead, you didn't say anything at all? A. I didn't say nothing. I just kept quiet.

Q. Did you say you had been brought into [beaten to] the judge? A. I couldn't say nothing because the detectives told me not to open my damm mouth and I didn't open it.

Q. But the judge never said that to you, did he? A. The judge—but I'm still handcuffed to the detectives.

Q. The judge never told you to be quiet.

As a matter of fact the judge asked you——A. The judge asked me but I was afraid to tell him anything.

Q. And even subsequent to that you came before another judge, I believe Judge Leibowitz of the County Court of Queens County. A. That's another judge.

Q. And that was probably on the indictment, I imagine. A. I don't know what it was sir.

I just was before him.

Q. And at that time you had no attorney, but Judge Leibowitz, I understand, was appointing an attorney to represent you in this matter. A. He appointed an attorney. Plead for me.

Q. He entertained [entered] your plea? A. Yes.

Q. The attorney did that? A. Yes. The judge did that.

Q. Beg pardon? A. The judge, the judge said not guilty for me.

Q. And the judge entered [a] plea of not guilty and then appointed an attorney? A. And then ordered pictures taken, to be taken of my body.

Q. Did that attorney ever get in touch with you? A. That was an appointed—later on, oh yeah, I saw the attorney two or three days later.

Q. I see. And of course you did have a chance to tell him what had happened. A. The attorney?

Q. Yes. A. I was in front of the officers all the time, even in Raymond Street sir.

Q. Are you telling us at any [that at no] time you were alone with your attorney? A. At any time. You see, when you say along [alone] it's as if I'm in the room with you by myself and no one is present. They never let me out of their sight.

Williams—Cross

Q. Did you tell the attorney the confession you gave was false? A. I didn't tell him nothing. I listened to him, because I didn't trust him. I didn't trust nobody.

Q. Was he the same attorney who represented you when you went to trial? A. I still didn't trust him.

Q. But was he the same attorney who represented you at the trial? A. Was the same attorney and I still didn't talk to him straight.

Q. At that time it wasn't just—I'm speaking now of the trial in County Court, I believe that was before Judge Goldstein, if I recall. A. Yes, I had three attorneys now. So you got to say which one. There is only one attorney I spoke to.

Q. But there were three attorneys representing you in court. A. Three attorneys and I spoke to one. He is the only one I told.

Q. When you say you spoke to him, you mean you discussed your case with him? A. It was the N. A. A. C. P. lawyer. I told him what they did to me and these——

Q. Do you recall? A. He was an N. A. A. C. P., Jesse Griggs.

Q. When did you first get a chance to speak to Mr. Griggs. A. I couldn't—figure maybe three or four days, but I'm not positive.

Q. You stated before the trial started, the latter part of January, 1948. A. It was January and ended March.

Q. March 2nd? A. March 2nd I believe it was.

Q. So some time during the month of January, all the month of February were and at least two days in March? A. I did see the three lawyers.

Q. And of course you saw Mr. Griggs? A. I only spoke to the colored lawyer. I wouldn't speak to the white lawyer.

Q. That is Mr. Griggs?

The Court: Griggs.

A. I was afraid of the white lawyers.

Q. You spoke to Mr. Griggs though. And he was the only attorney of the three to whom you would speak? A. That is right sir.

Williams—Cross

Q. But you did have an opportunity to speak to him. A. I had a chance to speak to him.

Q. Did you ever speak to him alone? A. No. Only the difference between him was my mother would come. I would tell my mother, when they allowed her to come in, to see me in the prison and they [then] would tell Mr. Griggs what I had to say, you know, when I was there in the prison visiting room. I didn't say much. I just listened.

Q. Okay, but at least for part of the month of January, the whole month of February, and two days in March, you had an opportunity to see Mr. Griggs in the court. A. I saw him in court every day but he only visited me once or twice in prison.

Q. But you could talk to him in court, too? A. I didn't talk to nobody in court.

Q. Now the court you were in, [was] somewhat similar to the one we are in right now, isn't that correct? A. No, way different.

Q. Well, I mean except for the physical appearance. There were twelve jurors there. A. Right.

Q. Pretty much the same, you still have a judge presiding, counsel table, and you have the jury. Of course there are some court officers walking around because it's a state court.

But you weren't handcuffed to a detective at that time, were you? A. I was handcuffed in the courtroom.

Q. You were handcuffed, in the presence of a jury? A. I was handcuffed, I would come in the courtroom, they would unhandcuff me and I sat there next to my lawyers.

Q. This went on for the period of time you previously discussed. Now, you say Judge Leibowitz upon the time of your appearing before him which I presume to be the indictment but which we are not sure yet, ordered some photographs be taken.

Were these photographs taken? A. Those photographs were taken but you got to figure that when Leibowitz saw me it was two or three days later and he saw my eyes were black.

Q. When was the first time—— A. He noticed my eyes were all black. I had black eyes.

Williams—Cross

Q. Were the photographs taken? A. Yes, the photographs were taken.

Q. Did your attorney, to your own knowledge, request to get those photographs? A. I don't remember too much about that.

Q. Were they ever offered up to the court? A. Yes, sir.

Q. At your criminal trial? A. On the trial.

Q. Were they shown to the jury? A. I don't know.

Q. Now, in the course of the criminal trial itself, did you take the stand to testify? A. Yes, I did.

Q. Now, you say that while you appeared in front of the magistrate, you were what we call, you stood mute, you didn't say anything to the magistrate on a plea of guilty. A. Yes.

Q. And I believe you did the same thing in front of Judge Leibowitz. A. That's because I was handcuffed to the detectives.

Q. And in your criminal trial you did take the stand and did testify. A. Yes, but I wasn't handcuffed to the detectives.

Q. You are [were] just sure [as you are] right now, is that correct? A. I wasn't just like I am now.

Q. Well, I mean by that you were sitting alone, there wasn't anyone sitting with you? A. Oh, yes sir. I had officers behind me.

Q. Well, there are officers in those courts. I said with exception of that. And were you confronted with the confession you made, Mr. Williams, in the course of that trial? A. Oh yes.

Q. And you denied that it was voluntary, isn't that correct? A. That is correct, sir.

Q. Did you tell the court and jury that the confession had been beaten from you?

Mr. Schwartz: Just a moment. I don't know whether your Honor would want this in front of the jury or not but I intend to ask the Court for a ruling on certain things.

The Court: Are you making an objection to the question.

Mr. Schwartz: I am making an objection to this line of questioning because of the ruling by the Circuit Court of Appeals.

Williams—Cross

And therefore, anything that went on during that trial would have nothing to do with this trial.

The Court: That objection must be overruled.

Mr. Schwartz: Pardon me.

The Court: That objection is overruled.

Mr. Schwartz: Exception.

The Court: Mr. Schwartz, I want to point out that the action that you are bringing has to be governed as I understand it by New York law and that is precisely what the reason for some of these questions that are being asked and——

Mr. Schwartz: But the Circuit Court of Appeals overruled them.

The Court: No, they didn't overrule anything in that regard. The Circuit Court of Appeals held the confession was coerced.

Mr. Schwartz: That is what I mean.

The Court: That is not the issue that Mr. Walls was addressing himself to.

Mr. Schwartz: I got that impression. I'm sorry.

The Court: He is addressing himself to the question of whether Mr. Williams had opportunity to have a jury, a State jury, tell the circumstances under which the confession was obtained and that is perfectly legitimate for him to do that.

All right.

Mr. Schwartz: I'm excepting to that question.

The Court: You may take an exception. It's automatically reserved for you anyway, Mr. Schwartz.

* * *

Q. Did you tell them in the course of your testimony about the length of time you had been held at the precinct house? A. Am I getting tried again or are you asking me a question?

Q. No, Mr. Williams.

The Court: Mr. Williams——

Williams—Cross

A. I said I'm made to feel I'm being tried again.

The Court: Mr. Williams, remember that you are bringing this action.

A. Yes.

The Court: It's not being brought against you. I understand obviously how hard it is for you to go through all this in view of what happened but Mr. Walls has every right to ask you questions and you're required to answer them. You are not being tried. You brought the action in this Court. All right.

By Mr. Walls.

Q. Let me rephrase the question, Mr. Williams. It may make it easier if you know where I'm going. You testified at great length concerning the events from September 8th or September 7th, I'm not sure of the dates myself, up through your arraignment, some time on either September 10th or September 11th and you're not sure of the dates. A. No, sir.

Q. Am I correct? A. Yes, sir.

Mr. Schwartz: I'll object to that question, depends on what date because there were certain dates he was not sure.

The Court: The point is, Mr. Schwartz, those dates are not criminal [material] in any event, whether it was September 7th, 9th, and so forth and so on is not really critical.

All right. Objection overruled.

By Mr. Walls:

Q. In any event, Mr. Williams, regardless of what those dates were, there was a considerable period of time about which we are talking about today. A. Yes, sir.

Q. We are not talking about two hours, we are talking about couple of days.

Williams—Cross

What I'm trying to find out is, at the time of the criminal trial in the County Court before Judge Goldstein, when you took the stand [whether] you also took the opportunity to tell the Court in such [as much] detail as you went into today before [about] your treatment at the hands of the police officers who you identified as he or they and we don't have the names, I assume, is that correct? A. I told them because I know you couldn't get me—I know you couldn't take me out of there because they already assured me the N. A. A. C. P. lawyers, they assured me you couldn't take me out of there.

Q. Your first opportunity I take it would be at your criminal trial. A. When I was in Magistrates Court they made it clear to me they would take me out. They could take me out at any time they want and I was ignorant of what they could do and not do but the N. A. A. C. P. lawyers said nobody would take me out of that court.

Q. That was your first opportunity? A. Was when I felt secure.

Q. That was at the criminal trial? A. When I felt secure they couldn't take me out then I told what happened to me.

Q. And you described your injuries? A. That is right. Otherwise I would have my mouth shut and not even take the stand.

Q. Yes, thank you. At that time, I know I asked you about the photographs, the jury did see the photographs and they [that] were taken. A. They saw a lot of things. I don't know.

Q. There was other testimony there, too, I imagine, in the course of that trial. Now, this case went on—are you familiar with the various steps that took place in bringing this case up and down the various courts for a determination on your confession?

Mr. Schwartz: I'm going to object to this as being immaterial to this action.

The Court: Well, I think—I'm not sure it's immaterial but it certainly isn't anything you have to ask Mr. Williams about.

Williams—Cross

Mr. Walls: Your Honor, I don't know whether he had consulted with attorneys or not. There may have been [many] names of attorneys throughout this whole—I have the names of several attorneys in my file.

I don't know what stage they really come into the proceedings.

The Court: Is that what you are asking, what attorneys he consulted?

Mr. Walls: I'm asking what opportunity he had to speak to attorneys, beside Mr. Griggs.

The Court: I thought you were asking him about the various proceedings that went on in court.

Mr. Walls: Yes.

The Court: It seems to me they are matters of record and you can stipulate to those.

Mr. Walls: Very well, your Honor. I'll withdraw the question.

The Court: Insofar as attorneys he could consult, that is something else. You are free to do that, Mr. Walls, and I would actually, I think the record ought to reflect what happened in the proceeding, that was appealed and so forth. I think that ought to be in the record.

Mr. Walls: Sorry, your Honor. I didn't hear the Court's statement.

The Court: I said I think the record ought to reflect the proceeding, how these proceedings were pursued.

But I think we can get that stipulated.

Mr. Wallis: If we can't do it through the plaintiff, your Honor——

Mr. Schwartz: We will stipulate to whatever the proceedings were.

The Court: Fine.

By Mr. Walls:

Q. Now, you stated in the course of your direct examination that they or he and I don't phrase it that way factitiously, Mr.

Williams—Cross

Williams, we don't know the name of these officers you are speaking of, brushed cigarettes against you.

That was the term you used, is that correct? A. Yes, sir, because you know the names.

Q. No, I said—— A. You know the names yourself.

Q. Did you use the term "brushed"? A. When I said the term brushed, it's just—you put and you put here, but I didn't know what happened down there.

I just know I have a round circular cigarette burn mark on my penis.

Q. You did mention just (not) [now] "put". A. I just put, they put the cigarette on me. When you put the cigarette on you put.

Q. Isn't this correct in your direct examination you used the term brush? A. Yes, I did sir.

Q. Well that was the only question I asked you Mr. Williams. I don't argue with your choice of language. I just want to find out why you used it. In any event you do know the difference between the two terms but on direct examination you did say brush.

Mr. Schwartz: Objection to that. He didn't ask him what the difference was.

By Mr. Walls:

Q. Now, you were arrested, according to your testimony, some time around the 7th or 8th.

I don't want to argue the dates, arraigned some time around the 10th or 11th.

Is it your testimony these police officers beat you that entire time? A. You can believe for 38 hours or more I was in their hands and they were my guards, yes sir.

Q. Is it your testimony they beat you for that whole period of time? A. When you say, how do you mean, you mean just straight up and down being and like that, each click of a clock, no. They beat me, as the questions went, one come in, it was a rotation, I don't know how many was coming in. I had rotation,

Williams—Cross

what you call rotation. This guy, like a different shift. Go out and come back. I had other different lawyers—all of them I don't even remember, faces all in my mind become jumbled. I just know particular ones I can particularly name that really put to, [it] to me.

Q. This continued for the whole period of time you described? A. This I know.

Q. The only purpose you were picked up—they had no reason, it was completely without reason I would gather, is that your testimony Mr. Williams? A. Your Honor, I could answer that question but——

The Court: Well the point about it, do you think you can answer that question, Mr. Williams?

Q. I'm trying to find out——A. Just rephrase that question.

The Court: Wait a minute. Mr. Williams, do you think you can answer a question like that, whether they had reason to pick you up.

Mr. Walls: He probably could not, the question is there is no apparent reason why it would be done.

The Court: All right.

By Mr. Walls:

Q. Were there any superior officers in the precinct house at any time that you were aware of, by that I mean lieutenant or a sergeant.

The Court: I didn't, no [don't know] sir, none until after they made me sign the confession.

Then they brought some big men in there. That is all I know.

Q. But you signed a confession which you stated was dictated by one of the officers. A. Not just one. Officers.

Q. Dictated by several officers? A. Yes, sir.

Williams—Cross

Q. Now you signed a confession or did you write it out? A. I wrote it and I signed it, just as they said do it.

Q. It's in your handwriting? A. That is right. I did. I did just what they said and I better had.

Q. You see, Mr. Williams, part of your [our] lack of rapport here is that in a courtroom we deal with language and I have to know whether it is signed or written. We have a record to maintain. I'm not trying to——A. I don't deal language—I'm a black—I'm a regular man. Just myself. I may not speak to your standard but I speak.

Q. I'm not criticizing you Mr. Williams, but you apparently take issue with me every time I try to define a word, but I have to, it's my job. A. Okay, sir, you're right.

Q. In other words, the confession was handwritten.

It wasn't typed. A. Correct, sir. I did like they told me.

Q. Now, the A. D. A. came in, the Assistant District Attorney.

There was a District Attorney [who] came in, subsequent to your writing out the confession? A. No.

Q. Well, I understood your testimony to be——

Mr. Schwartz: Maybe he doesn't understand what subsequent means. Use another word, say later or something like that.

Q. I understood you to say Mr. Williams after you had signed and written out your confession someone from the District Attorney came in. A. Correct. That is when he came in.

Q. Right. It was after the confession had already been signed, already written and signed. A. I'm not going to commit myself to that because during that stage everything was—I'm talking in my mind, even—this is 26 years ago. Even to now I never discussed it with nobody. I hardly in my mind, just blanks out. I don't want to accept none of what happened to me because each day goes by I feel it. I feel the effects that I can't be or could have been. What I was capable of being I cannot be. All them years gone from me. That is all I know.

Williams—Cross

Q. I understand Mr. Williams. I don't want to put you through any greater ordeal than you are going through than is necessary, but my question is prompted by the facts you had made a statement on direct examination. A. I'll stick by whatever I said sir, but I still say, no matter what, I'm not positive.

Q. Weil, I tell you the reason I asked the question, I want to find out if, when he walked in, you had already been beaten.

A. Yes.

Q. Could he see the beating on your face? A. He could see it, he knew it.

Q. And he was an Assistant District Attorney? A. You can believe it. That didn't make him no different.

He did not make it no different.

Q. He wasn't a police officer though, was he? A. Sir, there was a lot of men.

Q. He was an officer of the court. A. There was a lot of people there. Nobody helped me. Nobody lifted their foot.

Q. Now, after he came, and then subsequently he left, I imagine, he didn't stay there forever. A. I don't know what he did. He stayed with me

Q. He stayed for a while and left? A. He left out of the room.

Q. He asked you questions? A. He asked me questions.

Q. Did he have you—— A. The man——

Q. Did he have you sign statements? A. I don't know.

Q. The machine—— A. It was no machine. The man was right in with a pencil, sir.

Q. Okay. A. He left out the room but you didn't leave me because you was with me when we went to the house.

Q. But at some time subsequent, some time after he first came to see you, he left and went away, you remained with the police officers? A. I was also with the police officers.

Q. But there was a time when the District Attorney wasn't there, isn't that true? A. There was a time, when he went in his car and we was in the other car.

Q. Now this was of course after the confession. A. I'm talking about after the confession. I was still there.

Williams—Cross

Q. After you had signed the confession, after he had left, did the police officers beat you again? A. Yes, they did, sir. But not as bad as they beat me before. They just gave me what they call a reminder beating.

Q. This is so you don't forget what happened? A. They said, they would kill me if I didn't do what they said. That's exactly the way they put it.

Q. And you recall that statement? A. I recalled it, I can tell you the man that said it.

Q. That was 26 years ago. A. 26 years ago. I don't forget his face.

Q. I recall a few seconds ago, correct me if I'm wrong, it's very difficult to recall that Mr. Williams. A. That same statement there?

Q. No, I think you made the statement you can't recall what happened 26 years ago. A. Hold it a minute.

Q. When I asked the question. A. When it comes to mind, details, all the details about everything, but when it comes to faces and who hit me and what you people have done to me I don't forget. I don't forget.

Q. When you say "you" you are not referring to me, of course. A. I'm talking about the State of New York.

Q. We never met before. A. The people that represent the State of New York, sir.

Q. You had discussed this case with your attorneys, isn't that correct? A. Yes I had sir.

Q. Your attorney being Mr. Schwartz. A. Yes, sir.

Q. Now, did I understand you to say you suffered from a rheumatic heart?

That was the reason for your discharge from the United States Navy? A. Yes sir, that is true.

Q. And isn't it also true as a result of that you have some kind of sores on your legs? A. No, when I was young.

Q. You did have problems with your legs. A. When I was young, in the hospital, when I was in the hospital, and I was released from the hospital, all I had was murmurs. I had no swellings of the legs, or nothing.

Williams—Cross

Q. Has that condition cleared? A. Oh, yes.

Q. Rheumatic heart? A. Well, throughout the years that you imprisoned me I grew out of it. They say you grow out of it.

Q. The reason I asked that question is because you mentioned [being] not only in the Navy but the paratroopers. A. I grew out of it, sir. I grew out of it.

Q. Now, you stated you had a medical discharge from the Navy, for—— A. And Army, sir. I don't have a medical discharge from the Army. I was discharged with disability from the Navy and I have honorable discharge with a disability from the Army because I had a lung operation due to injuries in the paratroopers.

Q. And you incurred those injuries—— A. All service connected, sir.

Q. Service connected, right? A. Yes, sir.

Q. I just want to know whether or not you're claiming the lung condition is something that arose in prison. A. It happened in the Army. Since I've been out, sir.

Mr. Walls: I have no further questions.

The Court: Anything further? Thank you Mr. Williams.

Mr. Schwartz: At this time, for the purpose of the record, I would ask the Court to take judicial notice of the decision and the opinions of the United States Circuit Court of Appeals in this Second District.

And the decision rendered by Circuit Judge Smith, rendered in the opinion of the Court.

The Court: I told you Mr. Schwartz that not only do I have to take notice of it I have to follow the decisions of the Court of Appeals.

There is really no purpose to be served by this.

Mr. Schwartz: I just wanted to make sure I have it in the record, that I've presented this as part of my case.

Because I intend to ask the Court later on regarding charging the same and I want to make sure there is not some technical objection that I'm waiving.

Motion to Dismiss

At this time if the Court pleases, the plaintiff rests.

The Court: Mr. Walls?

Mr. Walls: Your Honor, can we excuse the jury for the purposes of motions?

* * *

(Jury exits courtroom.)

Mr. Walls: Your Honor, at this time the defendant City of New York respectfully moves to dismiss the complaint on the ground that the plaintiff has failed to prove a prima facie case for malicious prosecution.

The action presently being tried is the 1966 civil action and by prior rulings of the Court limited solely to the question of malicious prosecution.

Plaintiff's counsel as referred to the rulings and in fact the opinions and holdings of the Court of Appeals of the Second Circuit.

That Court when it finally reviews the decision of Judge Smith of the Southern District, held that the confession was coerced and I looked it up in the opinion while we were having that discussion and I must concede that counsel did use the correct language.

It did say [cite] the cases in which [there were delays similar to those here employed [which] require[d] a ruling of coercion as a matter of law.

However, the Court of Appeals in granting the writ of habeas corpus applied for by the plaintiff directed that the plaintiff be either released or promptly retired, and it's our contention that that in and of itself is a holding by the Court of Appeals that the indictment was proper, and that reasonable grounds existed for the prosecution of the plaintiff.

Otherwise it would have been a simple matter having reviewed the entire case, they had the entire record before them, they had all the testimony concerning the beatings, they had photographs.

Motion to Dismiss

They had the trial transcript, and the argument of both sides of qualified counsel. It would have been just as easy for them to have dismissed the indictment or directed that it be sent back and dismissed. That they refused to do.

The concurring opinion of Judge Lumbard even pointed out there was no question they had a right to hold him, they had a right to question him.

The fact of an indictment, once a person is indicted by a Grand Jury, that is prima facie evidence that reasonable grounds existed for the prosecution.

And having failed to prove a lack of reasonable cause the plaintiff has failed to sustain his burden.

Another essential element is malice. Courts in many cases have held that malice may be inferred. It's not something that must be inferred and where you have probable cause then even the fact, the existence of malice is not sufficient.

I respectfully refer the Court to our trial memorandum, particularly with the holdings in the Courts of that state that refer specifically to Caminito against the City of New York, 25 A. D. Second, 848, May of 1966.

The Court said and I just state briefly that these two essential elements are cause for malicious prosecution being absent.

For these reasons your Honor, I move to dismiss.

On the further grounds that plaintiff has failed to prove any cause of action against the City of New York and any other type of tort.

Mr. Schwartz: I think that when the Court states that the confession was the product of coercion as a matter of law, take the undisputed facts, and all the facts have been presented to the Court. I think that answers the question that there is no evidence unless evidence is presented. Counsel takes refuge in the fact that the

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Court stated, well, they more or less didn't dismiss the indictment.

I don't think they have the power to dismiss the indictment, or they don't do it. It has to go back to the Court.

The Court: I'm not concerned with what the Court of Appeals Second Circuit held, other than the fact they ruled the coercion was involuntary.

Mr. Schwartz: Well, it's more than that.

The Court: Wait a minute, Mr. Schwartz. Let me finish please.

I don't think that Mr. Walls' concept of that as to showing—the showing of probable cause with regard to what they did is well taken.

However, the issue as to whether you have a valid cause of action for malicious prosecution and the elements of it seem to me are governed by the law of the State of New York and I would think you ought to address yourself to that issue.

Mr. Schwartz: The law of the State of New York states that testimony is presented that is false or perjurious or fraudulent or words to that effect, whether there is an indictment by the Grand Jury or conviction, then becomes immaterial because it presupposes that the testimony to be presented would not be of that nature.

The Court: What cases are there?

Mr. Schwartz: Pardon me?

The Court: What cases are you referring to?

Mr. Schwartz: Well, first the case that counsel cited itself cites that——

The Court: You mean Caminito?

Mr. Schwartz: Yes.

The Court: Caminito I thought held to the contrary.

Mr. Schwartz: No, your Honor.

The Court: Caminito held, at least the Appellate Division, decision of the Appellate Division, held as far

Colloquy

as I know that an indictment by a Grand Jury was prima facie evidence of probable cause, unless there was showing that there was malice or it had been procured fraudulently.

Mr. Schwartz: And there is the case of Munoz against the State of New York.

The Court: What is the citation of that case?

Mr. Schwartz: Case decided by the Court of Appeals in June 19, 1966. Munoz against the City of New York. I don't have the legal citation.

The Court: Well, it is not going to help me very much unless you give me the citation for it. I can't find——

Mr. Schwartz: I'll have it Friday morning. The library is closed. I thought I could have it and call in.

The Court: You will call my office Friday morning and give me the citation so we can look at it. What is the name of the case, Munoz? M-U-N-O-Z?

Mr. Schwartz: Yes, sir.

The Court: Versus New York?

Mr. Schwartz: City of New York.

The Court: All right. It was decided in 1966 by what court?

Mr. Schwartz: Court of Appeals.

The Court: All right. We try to find it. What did that Court hold? Wasn't Caminito decided in 1967, however?

Mr. Schwartz: I think it was in 1963.

The Court: What did Munoz' Court hold, Mr. Schwartz—by the way, Mr. Walls, while Mr. Schwartz is looking for that case, if you have any requests to charge that you want me to consider, that is on the assumption this case will go to the jury, I think you better present them to me. I'd like to have something, if you have it, brought up to chambers about 9:30 Friday morning.

Colloquy

Mr. Walls: Yes, thank you your Honor.

The Court: All right, Mr. Schwartz?

Mr. Schwartz: In that Caminito case—the Appellate Division made——

The Court: I asked you about Munoz.

I have the Caminito case.

Mr. Schwartz: Oh.

The Court: I have citations from it and read it.

(Pause.)

The Court: Mr. Schwartz, I think that in this question you can present something to me on it, if you have some time. I would assume that you would be prepared on this question since you must have known this was going to be an issue that the City was going to raise.

Have the citation and a short memorandum on the question for me for Friday. I will reserve judgment on the motion. I must say that Mr. William's testimony, as I understand it, Mr. Walls, indicating the presence of the District Attorney during or immediately after the alleged beating and the time in which, and pressures in which he was subjected, would seem to me to raise an issue of fact as to whether or not the indictment was fraudulently procured and I don't think that it matters—I'm not clear on it, and I think both of you gentlemen—I would like to be enlightened by both of you gentlemen on it, but I am not persuaded that the fact that an indictment in and of itself—let me put it another way, the indictment which in and of itself is evidence of probable cause, but where the circumstances are such where there can be imputed the fact that the prosecuting attorney may have had knowledge of how the confession was procured, it seems to me that that undercuts the doctrine and seems to me to come within the facts for a jury, but I expect both of you to follow up this further, if you like.

* * *

Colloquy

New York, January 26, 1973
10:00 a.m.

* * *

(In open court.)

Mr. Walls: Your Honor, at this time the defendant, City of New York, offers into evidence the transcript of the trial as contained in the record on appeal and as certified by Francis J. S. Sinnott, Clerk of the County of Queens, [Kings] and the County Court of the State of New York at the time the action was tried.

These are bound volumes, your Honor, and there are certain matters in here which have to be excluded but it does contain briefs on appeal which has to be excluded. This is not part of the offer.

The Court: The offer you are making is of the transcript.

Mr. Walls: It's the transcript of the trial which was used in the Court of Appeals for the Second Circuit at the time the conviction was reversed.

The Court: Mr. Schwartz?

Mr. Schwartz: I object to the exhibit being offered in evidence on the ground that whatever is in the exhibit has already been passed upon by the Circuit Court of Appeals of this Circuit and the decision and finding of the Circuit Court of Appeals, based on that record, had already been made and I respectfully submit that that finding of a coerced confession if binding upon the Court I think at this time.

For that reason, I don't think it's appropriate.

Futhermore, I do not have an opportunity to cross examine the various parties involved and I think that on that ground also the plaintiff would be prejudiced in being able to cross examine the witness.

The Court: The objection is overruled. You brought an action here which charges malicious prosecution and the action involves the very thing that has been introduced into evidence.

The fact that the Court of Appeals has passed upon the issue of coerced confession doesn't go to all the other facts involved in the case.

Colloquy

The objection is overruled.

Mr. Schwartz: Exception.

The Court: As a matter of fact, I thought you would make the transcript a part of your case.

All right, it will be received in evidence.

Mr. Walls: I will remove the markers, your Honor, I put in there for my convenience at a later date. They are just page markers which I'll pull out.

The Court: Are they markers that separate the brief from the——

Mr. Walls: I can separate those.

The Court: Well, then, take those other markers out.

Mr. Walls: Your Honor, the other markers I would like to read certain portions of that.

The Court: All right.

Mr. Walls: Of course, I can leave them there for convenience of counsel so he can check them out too after I read it.

The Court: That is all right.

(Defendant's Exhibit A received in evidence.)

Mr. Schwartz: I would like to clarify something for myself if the Court pleases. If counsel intends to read the record, I would like to know at this time so I don't interfere with his reading constantly where I find a proper objection can be made to whether it's a certain part of the testimony, that is improper, whether I'm foreclosed from making any objections.

The Court: You are not foreclosed from making any objection. The only thing counsel will be allowed to—and permitted to—read are those matters which go to the issues before the jury and that is the question of malicious prosecution.

The question to the issue as to whether the confession was or was not coerced is not in issue.

The issue that is before the jury is whether Mr. Williams was in fact maliciously prosecuted. That is the issue which you brought later and anything that goes to that in the transcript Mr. Walls will be permitted to read into the record.

All right, Mr. Walls.

Moore—Direct

Mr. Walls: Thank you, your Honor. At this time, the City of New York calls to the stand Officer Frank Moore.

Frank R. Moore, called as a witness by and on behalf of the defendant, having been first duly sworn, testified as follows:

Direct-examination by Mr. Walls:

Q. Mr. Moore, would you try to keep your voice up so the last juror can hear you down to my right. A. Yes, sir.

Q. By whom are you employed Mr. Moore? A. New York City Police Department, Legal Division.

Q. How long have you been so employed, incidentally? A. 12 years, sir.

Q. At the present time you are assigned to the Legal Division of the Police Department? A. That is right sir.

Q. Do you have any assignments specifically in that division? A. I am assigned to the Corporation Counsel's office as an investigator.

Q. That is as a Police investigator? A. Police investigator, that is right.

Q. In other words, you would work for my office? A. That is correct.

Q. Have you been working on this case with me, Mr. Moore? A. Yes, I have.

Q. By virtue of a request I made did you contact the Police Department to obtain certain records? A. Yes, I did.

Q. You have those records with you? A. Yes, I have.

Q. Would you tell us from whom you obtained the records, what agency of the Police Department. A. These were from the Criminal Records Section of the Police Department.

Q. Where is that located sir? A. That is at 325 Hudson Street, New York City.

Q. And to what do those records refer? A. These are the complaint drawn up by the 71st Precinct Squad in regards to certain crimes that was committed in that particular area.

Moore—Direct

Q. Does this concern one particular crime or many crimes?

A. Many crimes, sir.

Q. May I see those documents, please? A. Yes, you may.

Mr. Walls: I will proceed to have these marked for identification in a moment your Honor but I just want to clear up one point.

Q. I address your attention to the complaint numbers on these sheets, they all appear to be the same.

Does this mean it's the same crime being investigated or different crimes? A. Different crimes more or less.

Mr. Walls: I'm going to have them marked for identification your Honor. I think they will be easier to follow. Can we mark this as a single exhibit? I don't know how many papers there are.

Q. This one letter is not part of it, is that correct? A. It isn't, no.

(Defendant's Exhibit B marked for Identification.)

Q. Mr. Moore, I would like you to go through, just glance at some of the documents comprising Plaintiff's Exhibit B for Identification and see if you can determine whether or not it concerns many crimes or just a single crime involving the death of Selma Graff. A. It involves one crime concerning Selma Graff.

Q. These forms, do they have a number in the Police Department? A. Yes, they have.

Q. What is that number, sir? A. Complaint number 477.

Q. But the form itself, does the form have a specific number? A. It is known as a 61 and supplementary forms are known as D.D.5s.

Q. Would you tell us what a 61 is? A. When a crime is committed it's reported to the precinct and when it's reported to the detectives they make out the complaint from whoever is reporting the crime and as they get additional information it's put on a form known as D.D.5.

Moore—Direct

This is an additional form.

Q. What does the D.D. stand for? A. Detective. [Division]

Q. And the 5 is just a numerical designation on that form?

A. That is correct sir.

Q. Have you had an opportunity to go through those forms?

A. Yes, I have.

Q. And can you tell us approximately when these forms were filled out, over what period of time. A. This was filled out from approximately June of 1947 to December of 1947.

Q. I see. So that was filled out prior to the time the plaintiff in this case, Samuel Tito Williams, was arrested—

Mr. Schwartz: Objection. Counsel is making a statement. On the evidence itself in the case, that is not so. Stating facts that are not so: Plaintiff was arrested September and he said the records are December and he says that is prior to the time he was arrested.

A. May I correct the record on this please?

Q. Have you had an opportunity to review those records further Officer? A. Yes, I have.

Q. When do they start? A. I see here April 24th of '47.

Q. That was shortly after the time that Selma Graff was found dead, is that correct, found murdered? A. Yes, it is.

Q. Do all those reports concern Samuel Tito Williams or do they concern many other people? A. From my investigation I see only Samuel Tito Williams here.

Q. That is the upper pages? A. Right. There are other names that were investigated.

Q. Those other names, do they include other people picked up as suspects in this homicide? A. Yes, it does.

* * *

The Court: You can be given an opportunity to look at them but I think you're objecting on the grounds—I don't know, Mr. Walls, what relevance they have to this case.

Colloquy

The fact that the Police Department investigates various crimes and so forth has nothing to do with the issues here, at least unless you can clarify them.

Obviously, they were making an investigation.

Mr. Walls: I submit it does have something to do with the issue here.

The Court: If you submit they do have you'll have to demonstrate they have relevance in order for them to be admitted.

Mr. Walls: I would like to approach the bench for that purpose, your Honor, because I don't think we should say in front of the jury.

The Court: All right.

(At the side bar.)

Mr. Walls: There are approximately 300 separate sheets prepared by various detectives concerning this one single homicide.

The plaintiff in this case is alleging—he is on the stand—he testifies he was the subject of malicious prosecution, they were out to get him. In effect this is what he is saying. He was prosecuted without justification at all.

This is solely for the purpose of showing that the Police Department had a continuing investigation. It is the only purpose I have for it.

Mr. Schwartz: They don't show it that way.

Mr. Walls: When you bring an action 26 years after the arrest it is pretty difficult to bring in witnesses. How [who] do you want me to bring in, Selma Graff?

Mr. Schwartz: You can put anything in those papers.

The Court: The problem with the papers I think—who has custody of them?

Mr. Walls: Police Department.

The Court: It seems to me——

Mr. Walls: Incidentally, these things to my knowledge do not implicate defendant. It may be one or two things implicating when it starts out but it has telegrams and everything else in there.

Colloquy

The Court: The problem I have with this, one is it seems to me that you ought to bring the custodian of the records here, **these records rather than** somebody picking them up in the department. I suppose it is relevant to show that other people were investigated and so on. That is not too helpful to complete the case but I think it is something that can be shown, but it seems to me, Mr. Walls, we have to have these records more I didn't find.

Mr. Walls: All right.

Mr. Schwartz: Your Honor, may I ask one question? Were these records used at the time of the trial?

Mr. Walls: I don't—of course not, no.

The Court: The question is whether he was maliciously prosecuted. He is trying to show there were a whole lot of people investigated. The police have a murder on their hands and picked up a lot of people and investigated. I suppose that is what it's for.

Mr. Walls: That is the only purpose, but we can, you know, stop at this point. We don't have to pursue it any further.

* * *

Mr. Walls: At this time, your Honor, the defendant City of New York wishes to read certain portions of defendant's Exhibit A in evidence. If counsel wants to follow along with me he may.

Mr. Walls: At this time, your Honor, the defendant City of New York would like to read from Defendant's Exhibit A in evidence, testimony—or portion of the testimony—of William S. Perlman, at page 535, for the record he is an Assistant District Attorney.

I'll read those questions and answers your Honor, page 536, folio 1606, direct examination by Mr. McCabe.

"Q. Assistant District Attorney in the District Attorney's office of the County of Kings? A. That is correct.

Q. How long have you been connected with that office? A. Since January 1, 1940.

Q. Prior to joining the staff of the District Attorney, did you hold any other public position? A. I was an

Colloquy

Assistant U. S. Attorney from September 11, 1934, until December 31, 1939.

Q. You are presently assigned as a trial assistant in the County Court of the County of Kings? A. That is correct, sir.

Q. In the month of September, 1947, were you in charge of the Investigations Department of the District Attorney's office of this County? A. Yes, sir.

Q. Sometime, Mr. Perlman, on the evening of September 8 or the early hours of September 9, did you have occasion to visit the structure in which the 73rd Precinct is located here in the Borough of Brooklyn? A. Yes, sir.

Q. Will you tell the Court and jury, Mr. Perlman, in your own words, the time at which you arrived there, what you observed when you entered, and what occurred after you made your visit and during your visit? A. I received a call at home, approximately 11:15 or it might have been 11:30 p.m. on September 8, 1947. I waited some fifteen or twenty minutes until the police car arrived, and took me to the 73rd Precinct.

Q. About what time would you say you arrived at the precinct? A. Oh, I should say five or ten minutes of twelve.

Q. What occurred when you got there? A. When I got there, I met Captain Sabatino. I had a very short discussion with him. I proceeded to a telephone and ordered the precinct in which the stenographer of our office resides, requested that he be brought forthwith in a police car to the 73rd, because the regular stenographer was out with Mr. Gitlin on the usual calls of the evening. I could not even locate him at the moment. I waited for him until he got there.

In the meantime I had learned something, and I wanted to see something for myself, so I walked into a doorway of one of the two rooms in the rear of the first floor, upper floor of the precinct, and there for the first

Colloquy

time I saw this defendant. All I did was just take a good look at him, and then I stayed by myself; no activity took place; talked to no one about the case except Captain Sabatino as I entered; and when the stenographer got there, ordered the defendant into a room when I wanted to take his statement, ordered several policemen, several detectives to be present at the time of the taking of that statement, introduced myself to the defendant for the record, and proceeded to ask him questions and listened to his answers."

Mr. Walls: Going to page 549, folio 1647, and I'm only picking up a portion of the answer, your Honor, the rest, I believe, may go to another issue we are trying to keep out. The last paragraph of the answer which starts on page 548 of folio 1643.

"That was the reenactment. When we got through with that, we went back to the precinct. And then at the precinct, probably off the record it was not necessary, I said to him, How do you feel?"

"Fine."

"Can I do anything for you?"

He said, "I would like to have a cup of coffee and a sandwich."

"What type of sandwich do you like? You tell me what kind and I will get you anything you want."

I sent out for a sandwich and a cup of coffee and he had the sandwich and coffee right there."

Mr. Walls: Page 551, still on direct examination by Mr. McCabe, at folio 1652.

By Mr. McCabe:

"Q. Proceed, Mr. Perlman. A. As we walked along, I had observed him with a slight limp.

* The reporter did not take notes of what was read. We insert the matter from Defendant's Exhibit A at the places where it was read.

Colloquy

Q. You mean during the reenactment? A. During the walking part of the reenactment, at times he walked, well, occasionally, a slight limp of his left leg—no, perhaps—yes, his left leg, and I asked him if anything was wrong with him, why did he limp, and he said “Nothing,” but then he said to me that he was afflicted with rheumatic fever and that it catches him in the left leg. He gave me that. I had observed in his presence on his face a slight discoloration of the left eye, right in the corner, a slight discoloration, and he normally as you can see, has high cheek bones. I could not make out whether it is a swelling or not. Photographs were taken.”

Mr. Walls: That was part of folio 1653.

Starting on page 552, for the sake of continuity, continuation of direct examination by Assistant District Attorney Mr. McCabe of Assistant District Attorney Perlman.

“Q. Go on, Mr. Perlman. A. I believe by that time we had marked everything in evidence. I had a talk with him about other matters. It did not pertain to this case. The record is there with that.”

Mr. Walls: Question by the Court, folio 1657, page 553.

“By the Court:

Q. You talked about some mark under his eye? A. Yes.

Q. Go ahead with that. A. He appeared calm. He was cool—he was just as he is sitting there right now. He talked and answered questions very freely, friendly to me. I was particularly friendly and kind to him. I was there to take a statement. His eye, the left eye, as I said was discolored in the corner right on the eyelid down there.

Q. You are pointing to the side of your nose 1658 now? A. Yes.

Colloquy

Q. Go ahead. I want it for the record that you are pointing to the bridge of your nose under the eye? A. Yes, that is right.

Q. Go ahead. A. There may have been a slight swelling in here or a slight swelling on the cheek; whether it is the cheek bone or not—but from where I sit now, that left eye looks just as if it was swollen now, just as swollen now as it was then. It was close to him. I had a talk with him. I watched him and I looked at him.

Q. And that is the observation you then made of his eyes? A. That is correct."

Mr. Walls: Skipping over to page 554, folio 1661.

"Q. I will refresh your recollection. Go on and tell us what happen after the box was discussed and he explained and showed it to you. A. He once again asked me about his mother and I sent out to bring his mother in, and just before his mother came in, he took a ring off his finger and he said he wanted his mother to have that ring, and I held it; I took it from him. His mother came into the precinct. She sat down in front of him and I was between them. She came in and she said, "Samuel, what is the trouble?" And he kept quiet.

I then said to her, "Samuel wants you to have this ring."

Q. Samuel Williams was present? A. That is Samuel Titto Williams. She called him Samuel.

Q. Go ahead. A. And I gave her the ring, and I said, "Mother, Samuel wants you to have this ring." "Samuel, where did you get the ring? What is all of this about?"

Q. Who is now talking? A. Titto, the defendant.

Q. You are quoting someone: "Where did you get this ring?" Who said that? A. The mother said that

Colloquy

to the defendant. "Samuel, where did you get this ring? What is all of this about?"

And he kept quiet. He put his head down. I answered, "He wants you to have this ring for sentimental reasons. He will tell you about it in a little while." I then stopped everything, ordered the police to take him and his mother and give them a room by themselves so that he could be with her and tell her himself what he had done, and into the room they were taken, the door closed, and left there by themselves. After about ten or fifteen minutes, it may have been twenty; it may have been only five, I was not interested in the time—I learned then that he was to go to the line-up and I figured——

Q. Don't tell us what you figured. You received certain information and what did you do? A. I then walked over to the room, knocked on the door and looked in. He was seated to the right of his mother—no, the mother was seated to his left. She was nearest to the door. He was away from the door, two chairs up against the wall. And as I came in there, both of them, if they had been talking, they were not talking when I came in, and I said to him, "Samuel, did you tell your mother what you did?"

He put his head down. I said, "Samuel, did you tell your mother that you killed the Graff girl?" And he just put his head down. And I repeated for the third time, "Samuel, did you tell your mother that you hit the Graff girl?"

And he said, "I didn't mean it. It was intentional." I emphasize the word "intentional." That is the word he used. It stuck with me. It is in my memory now."

Mr. Walls: There is some colloquy between counsel and your Honor at the bench which I won't read but I do want to read a portion, continuing by Mr. McCabe, folio 1666.

Colloquy

By Mr. McCabe:

"Q. I didn't get that answer, please, completely, Mr. Perlman. A. "It was intentional. I didn't mean to do it."

Q. "It was intentional; I didn't mean to do it"?

The Court: Wait a moment, please, until Judge Healy ceases speaking to the person there.

Mr. McCabe: Did you get the last answer, Judge?

Mr. Healy: May I have the last answer.

The Court: Read the last answer to him.

(The following was repeated by the Court Reporter): "A. If it was intentional. I didn't mean to do it."

Mr. Walls: There is some further conversation in the presence of the defendant, your Honor. I am not going to read that but I do want in the interest of justice to clarify that statement made by Mr. Perlman because he goes on on another page. Page 558. This is in the middle of folio 1672.

"Q. Let me refer to something else, Mr. Perlman. You said, in his mother's presence, he used the expression, "It was intentional. I didn't mean to do it." Am I quoting you correctly? A. Yes.

Q. It is "intentional": is that right? A. That is right.

Q. Is that the impression you got from him, was that he meant "intentional"? A. That is correct.

Q. That is was intentional? A. That is right.

Q. "I didn't mean to do it"? A. That is his phraseology, "intentional." To me it meant unintentional. He didn't intend to do it, but did do it.

But he did use the word "intentional"? A. Yes.

Q. But you don't think he meant that word? A. That is right.

Q. All right."

Mr. Walls: Going back to page 557, at folio 1671

Colloquy

"Q. Now, answer me this, Mr. Perlman: Did any occurrence take place as you were leaving the Graff apartment? A. While we were in the Graff house——

Q. While you were leaving—— A. Just before we left, I wanted the mother out. She insisted upon sitting in the living room on a couch, which was to the right wall as we leave the room, and she sat there. I had a talk with her. I then went into the room and ordered everyone else out of the room that was in there, except, I believe, Detective Rooney, I may be wrong, or Captain Sabatino, either one.

Q. The room you are speaking of being in was still in the bedroom? A. In that bedroom; ordered everyone else out.

Q. Yes? A. I then walked out. Then Williams followed and the detective followed behind him, holding him, I believe, by the right hand, by the——cuff. The mother jumped up from couch and in front of him, and I was right there and she shouted at him, "Why did you kill my Selma? Why did you kill my poor little girl? Why did you do it?" and his reply was, "I didn't mean it. I didn't mean to do it," and with that, out he went, out of the apartment.

Q. Let me refer to something else, Mr. Perlman. You said, in his mother's presence, he used the expression, "It was intentional. I didn't mean to do it." Am I quoting you correctly? A. Yes.

Q. It is "intentional"; is that right? A. That is right.

Q. Is that the impression you got from him, was that he meant "intentional"? A. That is correct.

Q. That it was intentional? A. That is right.

Q. "I didn't mean to do it"? A. That is his phraseology, "intentional." To me it meant unintentional. He didn't intend to do it, but did do it.

Q. But he did use the word "intentional"? A. Yes.

Colloquy

Q. But you don't think he meant that word? A. That is right.

Q. All right."

Mr. Walls: That is all the testimony I intend to read of the Assistant District Attorney Perlman.

Reading now from the testimony of Paula Graff.

For the purpose of the record I'll identify her as she is identified in the record, your Honor.

The Court: Yes.

* * *

Mr. Walls: Your Honor, as I stated before, I will identify this witness as the identification appears in the official transcript. Mrs. Paula Graff, G-R-A-F-F, residing at 143 East 96th Street, Brooklyn, New York, called as a witness for the people, being first duly sworn by the Clerk, Mr. Pugleisi, testified as follows:

Page 53, folio 157 is where that identification appears. I'll read from page 58, folio 172. I am only reading a portion and am starting with the fourth question.

157 MRS. PAULA GRAFF, residing at 143 East 96th Street, Brooklyn, New York, called as a witness for the People, being first duly sworn by the clerk, Mr. Pugliese, testified as follows:

Direct Examination by Mr. McCabe:

Q. Mrs. Graff, on April 19 or 20 of this year, where did you live? A. The same place.

Q. What is that address, Mrs. Graff? A. 143 East 96th Street.

Q. And is that house your home? A. That's my home.

158 Q. In the Borough of Brooklyn, County of Kings? A. Yes.

* * *

Colloquy

Q. Did there come a day in that month, Mrs. Graff, when the police officers arrived there with a man? A. Yes.

Q. Were you home at the time? A. Yes, I was home.

Q. Was that man this defendant? A. This is the man (indicating).

173 Q. What? A. This is the man.

Q. And you were looking at the defendant as you said, "This is the man"; is that right? A. This is the man. I hope he kills me now, because my life is nothing.

The Court: Strike that out. I must instruct the jury to disregard that statement.

Mr. McCabe: Just try to answer my questions, Mrs. Graff.

The Court: Mrs. Graff, you must not say anything excepting what the question is asked of you, please.

174 The Witness: I'm sorry.

By Mr. McCabe:

Q. Just say yes or no to this, Mrs. Graff: While you were there and while this defendant was there, did you see him going about the apartment? A. Yes, I did.

Q. Was he doing different things in the apartment? A. He showed what he did when he went in.

175 Mr. Healy: I will object to that and move to strike it out.

The Court: I will let it stand.

Mr. Healy: I respectfully except.

By Mr. McCabe:

Q. Did there come a time, Mrs. Graff, after he had been in the apartment for some time during these various things that you yourself spoke to the defendant? Did you say something to him? A. I said to him when he walked out, when he was ready—I didn't say nothing.

Colloquy

When he walked 176 out already I just asked him one word, I said to him, "Why did you kill her?"

Q. Did he answer you, Mrs. Graff? A. He said, "I didn't mean it."

Mr. Walls: (Continuing) On page 59 in the middle of the folio 175, by Mr. McCabe.

Mr. Walls: That is folio 176. May I have the Court's indulgence for a moment, your Honor. I just want to look over these. I have nothing further to read, your Honor.

* * *

Colloquy

* * *

AFTERNOON SESSION: 1:30 p.m.

(Jury present.)

Mr. Schwartz: I will start with the first witness, William S. Perlman, Assistant D.A., whose testimony was partly read by the attorney for the defendant on page 569.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

Mr. Schwartz: Page 570.

Q. What did he have on? A. He had a pair of trousers on, and I believe a multicolored sweater, with a quarter length sleeve. That is as I saw him at the time.

Q. You told us this morning, Mr. Perlman, according to my notes, that you were particularly kind to the defendant, is that right? A. I was searching——

Q. Is that right? A. Yes.

Q. What do you mean by "particularly"? A. I knew that the charge was murder. I wanted the truth.

Q. Yes? A. I wanted to give him every opportunity to be calm, be at ease, and to make answers to the questions. I did not hurry the questions. I did not hurry his answers. I just had a conversational tone of voice. He had likewise. The atmosphere between us was not argumentative. It was in a friendly way. He was answering questions. He was unburdening himself to me.

Q. Did you talk in about the same tone of voice you are talking now? A. Oh, most of the time I did. I am emphatic when I put the question, just as I am emphatic now to you.

Q. In otherwords, you say that the questions you put to him were protracted and quite lengthy? A. I was emphatic to make sure that he would hear and to make sure that he understood me.

Q. Yes? A. And to make sure that there was no question as to what I said to him, so whatever answer I got was in answer to my question, a responsive answer.

Colloquy

Q. Did you have any idea that if you were not kind to him, you might get a different answer?

Mr. McCabe: That is objected to.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

Mr. Schwartz: Page 56.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

* * *

By Mr. McCabe:

Q. What time did you return home, Mrs. Graff, and please, will you try to talk to this gentleman here, Mr. McGarry? A. Yes.

Q. What time did you get back into your home? A. When I came home it was between two o'clock or ten minutes more.

Q. Two or a little after two o'clock? A. Yes.

168 Q. That would be in the morning? A. Yes.

Q. Sunday morning? A. Yes.

Q. Is that right? A. That's right.

Q. What did you see when you got home, Mrs. Graff?
A. What I saw is I saw my son was running and he was full of blood. He said, "Ma, give a look if Selma is alive. Mama, look on Selma." And he was open, his head; his head was open.

* * *

Mr. Schwartz: Page 58.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

* * *

By Mr. McCabe:

Q. Just say yes or no to this, Mrs. Graff: While you were there and while this defendant was there, did you see him going about the apartment? A. Yes, I did.

Q. Was he doing different things in the apartment?
A. He showed what he did when he went in.

Colloquy

Mr. Schwartz: I will now read from the testimony of Donald Graff, Page 85.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

(Courtroom cleared.) 253

(Donald Graff called to the witness stand.)

By the Court:

Q. Stand up, Donald. I want to talk to you. How old are you, Donald? A. I'm ten.

Q. Face the jury. How old are you, Donald? A. Ten.

Q. Ten years of age? A. Yes.

Q. You have been going to school, I hear; is that right? A. Yes. 254

Q. What school do you go to? A. P. S. 189.

Q. What grade are you in? A. 5A.

Q. How long have you been going to school, Donald?
A. I don't know.

Q. How long have you been going to that school where you attend now? A. I don't know.

Q. Who is your teacher there? A. Mrs. Sloan.

Q. How long has she been your teacher? A. A couple of months.

Q. Just a couple of months? A. No, more than that; a long while.

Q. Tell me, Donald, do you know what it means to tell the truth? A. Yes. 255

Q. Do you know what it means to swear before God to tell the truth? A. Yes.

Q. Do you know what would happen to you if you didn't tell the truth? A. Yes.

Q. What would happen to you? A. Well, you would get a sin.

Q. You would get a what? A. You would get a sin or something like that.

Q. Are you willing and ready to tell me the truth of what you know? A. Yes.

Colloquy

Mr. Schwartz: Page 98.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

292 By the Court:

Q. You did say, Donald, before that this man that was in your room was wrestling with our sister? A. Yes.

Q. When he was wrestling with your sister, where was she? Was she in bed or out of bed? A. She was in bed.

Q. And he was in the bed also? A. He was leaning over the bed.

Q. Standing, leaning over her, you mean? A. Yes—No, just leaning over (indicating).

Q. Did you get out of bed while the man was 293 hitting your sister, Donald? A. No, I stood in bed all the time.

Q. All the time? A. Yes, until he went out the second time.

Q. This blow on your head, it hurt you, didn't it, Donald? A. It hurt, and then it went away. It hurt a little.

Q. Didn't it hurt you for a few days afterwards?

Mr. Healy: That is objected to.

The Witness: No, I don't know; I don't know about that.

294 The Court: I will let the answer stand.

By Mr. McCabe:

Q. When you woke up, Donald, was there any light in your bedroom, any light in the bedroom which was lit? A. Well, the foyer.

Q. There was a light in the foyer, is that right? A. Yes.

Q. And in the bedroom itself, there wasn't any light there, is that right? A. In the bedroom? No, there was no light.

Colloquy

Mr. Schwartz: Page 100.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A.)

298 Q. You said a couple of minutes, Donald. A. I know that he stood out, well, more than a half a minute or more.

Q. You don't know exactly how long he was out, is that right? A. Yes.

Q. When he came back into the room, were you on the floor, standing up? A. No, I was lying in my bed still.

Q. When he left the room, you did not go to Selma's bed? A. No.

Q. You did not? A. No.

Q. And when was it that he hit you on the 299 head, when he came in the second time? A. Yes, and while he was running out the second time, he hit me.

Q. When did you get out of bed, after he came in the second time? A. What?

Q. When did you get out of bed, after he came into the room? A. The second time—when he went out the second time.

Q. You got out of bed? A. Yes, sir.

Q. And did the man come into the room again? A. No, he was only in twice.

Q. And after you left the second time, you did not see him again, is that right? A. No, I didn't 300 see him any more after that.

Q. And you don't know how he got out of the apartment? You did not see him go out, is that right? A. No, I didn't see him how he got out, but I think—

Q. That is right, Donald. So that we now understand each other, you woke up while the man was hitting your sister? A. Yes.

Q. You stayed in bed? A. Yes.

Q. And the man left the room? A. Yes.

Q. You came back in again? A. Yes.

Colloquy

Mr. Schwartz: Page 103, cross examination by Mr. Healey, counsel for the defendant in this case, Mr. Williams, plaintiff in this case.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A in evidence.)

Cross Examination by Mr. Healey:

Q. Now, Donald, will you try to talk up as loud as you can like a good boy, so we can all hear you? A. Yes.

Q. Was the man who was hitting Selma a white man? A. Yes, he had a red skin, a little red skin 308 like that (indicating).

Q. And the police asked you some questions about what happened there, didn't they? A. Yes, the detectives asked me questions.

Q. The detectives asked you if the man who was hitting your sister was a white man and you said to the detectives that it was a white man, didn't you? A. Yes.
By the Court:

Q. What do you mean when you said "like that"?

A. Like that (indicating the official re- 309 porter).

Q. You mean like what? A. Like his face.

Q. Like his face? A. Yes.

Mr. Healey: Will your Honor take judicial notice that the official reporter is a white man?

The Court: With a flushed face, I would say.

Mr. Healey: Shall I proceed?

The Court: Yes.

Mr. Schwartz: Page 105.

(Mr. Schwartz reads to the jury from Defendant's Exhibit A in evidence.)

Q. Well, you remember where you got hit, what 313 part of your head? A. No.

Q. Where were you when you got hit? Were you standing up? A. When I got hit I was lying in bed.

Colloquy

Q. When the man hit you, was it in your head or was it on some part of your body? A. On my head.

Q. And did you jump up out of bed after the man hit you? A. After he hit me, he went out, and then I went out of bed.

Q. And you got up out of the bed, is that right? A. Yes. 314

Q. And when you got up out of the bed, where did you go? A. I went to the door to answer it.

Q. And you walked from the bed to the door, did you? A. Yes.

Q. Did you open the door? A. Yes.

Q. There was not a lock on that door, was there? A. Well, you have to turn the knob.

Q. Do you open the door by just turning a knob, or do you have to turn the latch that is on it? A. A knob.

Q. You opened the door all right? A. Yes.

Q. You did not have any trouble in opening the 315 door, did you? A. No.

Q. Were you bleeding then? A. Yes, I think so.

Q. Are you sure? A. I probably was because he hit me.

Q. And before you went to the door, you called out somebody's name, is that right? A. (No answer.)

Q. Did you call out the names of the people— A. Newdorf.

Q. Newdorf? A. Yes.

Mr. Schwartz: Page 107.

Mr. Schwartz reads to the jury from Defendant's Exhibit A in evidence.)

Q. What kind of a hat do you wear? A. Well, 319 a plain hat with earmuffs, but he didn't wear that kind of a hat.

Q. Did you see his hat fall off at any time? A. What is that? No.

Colloquy

Q. What color suit did he have on? A. Blue.

Q. No doubt about that? A. No.

Q. You got a good look at the suit, didn't you?

A. Yes, with white stripes.

Q. Even had white stripes in it? A. Yes, sir.

Q. You could see the white stripes in the suit?

A. Like that what you are wearing; that is a blue suit. 320

Q. I mean, there was light enough in the room for you to see the color of his suit, wasn't it? A. Yes, sir.

Q. And there was light enough in the room for you to see the white stripes, is that right? A. Yes.

Q. Now, did he have a shirt on, Donald, a collar and tie? A. Yes.

Q. Was it a white shirt? A. Yes, white.

Q. A white shirt? A. Yes.

Q. Do you remember what color the tie was? A. No.

Q. Did he have a vest on like I have on? A. No.

321

Q. Did he have a sweater on? A. You could not see his vest, see, because his coat was like that, you know, this part, you know, across was like that.

Q. Indicating his coat was buttoned across the chest with the button up at the top? A. No, not up to the top.

Q. You mean, the top button on the coat? A. You know, buttoned down like you are wearing it.

Mr. Schwartz: That is all if the Court pleases.

Mr. Walls: Will the Court bear with me just a moment, your Honor. I just want to check my notes on the testimony of Donald

The Court: I don't know where we are now. Mr. Schwartz, I gather, the City has rested.

Mr. Walls: The City had rested, yes.

The Court: Mr. Schwartz read portions of the Exhibit in rebuttal. Are you through?

Colloquy

Mr. Walls: At this time, your Honor——

The Court: I meant Mr. Schwartz.

Mr. Schwartz: Well, I wanted to get procedure. Whether he is reading anything, whether the Court is permitting him to read at this time or whether your Honor wants to wait until I'm through altogether.

The Court: All right, I suppose we might as well.

Mr. Walls: I'm just going to read another portion, your Honor.

Mr. Walls: This is the examination of Donald Graff, page 119 and 120, questions by the Court, just below folio 357.

“By the Court:

Q. Tell me, Donald, before this happened to your sister Selma—— A. Yes?

Q. ——Was your memory good or bad or poor?

A. What do you mean? Say that again.

358 The Court: Read that question to him. Listen to it, Donald.

(The question was repeated by the reporter, as follows: “Tell me, Donald, before this happened to your sister Selma, was your memory good or bad or poor.”)

The Witness: It was all right.

By the Court:

Q. Was your memory all right? A. Yes.

Q. Now, since this happened, since you were 359 hit on the head that night—— A. Yes?

Q. Has your memory been the same? A. Well, not so good; I don't think that good.

Q. How long were you in the hospital? A. About two days.

Q. And did the doctor treat you then for the injury that you received on the head? A. Yes.

Q. Since then how have you been getting along in your school work? A. I am all right in school.

Colloquy

Q. But your memory is not as good as it was before?

A. No—it is all right—it just falls down a little bit.

Q. And tell me, at night, have you slept as well 360 since this happened to your sister as you slept before?

A. Yes.

Q. Do you wake up during the night at all since this happened? A. No.

Q. Some things you remember and some things you do not remember, is that correct? A. Yes.

Q. Since this happened? A. Yes."

(Mr. Walls reads from Defendant's Exhibit A in evidence to the jury.)

Mr. Walls: And now I would like to read from the testimony of another witness.

Mr. Schwartz: Just a moment.

Mr. Walls: This pertains to the same thing I just read your Honor.

Mr. Schwartz: What other witness?

Mr. Walls: I was just about to——

The Court: The whole document is in evidence, Mr. Schwartz.

Mr. Schwartz: That is the point of my objecting. He rested on rebuttal. He can't introduce another witness now.

Mr. Walls: I take exception to the remarks of counsel. If he was on rebuttal he should have let us know. He was reading certain portions of the testimony I read because he wasn't prepared to do it before we recessed for lunch. I could have easily let him do it at [that] point and forced him to go on.

Mr. Schwartz: I thought that is what happened.

Your Honor asked if you rested and you said yes. That is why I read it on rebuttal now.

The Court: What is the issue Mr. Schwartz? It goes to the same issue?

Colloquy

Mr. Walls: This goes to the issue of Donald Graff which was not read on direct.

Mr. Schwartz: He says a new witness. I don't even know what witness he is reading.

The Court: That is all right. I'm allowing him to read. You can find out by asking him what witness or look at it.

Mr. Walls: Page 145. I will identify the witness as he was identified in the court. Dr. Edward Cordiney, recalled as a witness in behalf of the people and having previously been duly sworn, testified further as follows—would the Court like me to read the previous portion for clarification, the direct examination by Mr. McCabe. This is folio 435.

“DR. EVERETT CORRADINI, recalled as a witness on behalf of the People, and having been previously duly sworn, testified further as follows:

Direct Examination by Mr. McCabe:

Q. Doctor, you testified here yesterday concerning Selma Graff? A. Yes. 435

Q. Do you recall treating a Donald Graff on April 20, 1947? A. I do.

Q. And where was it and what time that you first saw Donald Graff? A. I saw him in Kings County Hospital approximately four-thirty in the morning.

Q. Did you do something for Donald? Did you also make an examination of him? A. I did.

Q. Tell us what your examination disclosed, Doctor, and what you did for him?'

Mr. Walls: Folio 437, by Mr. McCabe.

437 Q. What about his physical condition otherwise, Doctor, or his emotional state?

Mr. Healy: That is objected to.

Mr. McCabe: I withdraw the question.

Colloquy

By Mr. McCabe:

"Q. What else did you observe about Donald, Doctor?

A. During the first few hours he was almost unmanageable from the behavior standpoint. He was highly active, extremely restless. His speech was occasionally unintelligible and 438 frequently irrelevant. He would not cooperate as far as was concerned treating him. He would frequently break into spells of crying without apparent immediate cause for the crying.

Q. Was he hysterical, Doctor? A. It could be described in that way."

Mr. Walls: This is page 147, folio 440.

"Cross Examination by Mr. Healy: 439

Q. Doctor——

By the Court:

Q. How long was he in the hospital, Doctor? A. About three days

Q. And was he under your care during those three days? A. He was.

Q. Under your supervision? A. Yes.

Q. You say the cut on the scalp of his head was about an inch and a half long? A. Yes.

440 Q. How deep was the cut? A. Almost to the bone.

Q. Almost to the bone? A. Yes.

Q. Was he bleeding when he came to the hospital? A. I can't recall that.

Q. You described his condition, of the spells of crying that he had. A. Yes.

Q. And you say at times you could not understand what he was saying? A. That is true.

Q. In other words, he was incoherent, was he? A. A good part of the time, yes.

Q. Did that condition last the entire three days that he was in the hospital? A. Not to that de- 441 gree, no.

Colloquy

Q. Will you please explain what you mean by that?

A. Yes. At the time of discharge, these behavior changes that I have described were considerably less obvious. He was still what I would call highly excitable and nervous.

Q. Have you seen him since then, Doctor? A. Only today."

(Mr. Walls reads to the jury from Defendant's Exhibit A in evidence.)

Mr. Walls: That is all, your Honor.

The Court: All right.

Mr. Schwartz: May I have a few minutes, Judge?

The Court: All right.

Mr. Schwartz: If the Court pleases, I would like to read a couple of questions and answers with regard to that. On page 48, questions by Mr. Healey.

Mr. Walls: Your Honor, can we have the witness?

Mr. Schwartz: Same witness.

Mr. Walls: I thought you said 48.

442 "By Mr. Healy:

Q. You made a record, Doctor, did you? A. Yes.

Q. Have you got it with you, please? A. It is in the court.

Q. Did his relatives visit him at the hospital, Doctor? A. People visited him. I don't know who they were.

Q. During the period he was there, you saw other people come to visit him; right? A. Yes.

Q. And did you hear him talk to those people? 443 Did they talk to him? A. Oh, yes. They spoke to him.

Q. Did you speak to him? A. I did.

Q. Did he answer you when you spoke to him? A. He did."

* * *

Motion to Dismiss

Mr. Walls: [The] Only thing thing pending right now, your Honor, is the motion I made at the close of the plaintiff's case and the motion I have yet to make at the close of the entire case.

The Court: Now you can make those motions.

Mr. Walls: Very well, your Honor. At this time defendant City of New York respectfully moves to renew the motions made at the close of the plaintiff's case and at the close of the entire case again moves to dismiss the complaint for malicious prosecution, because of the plaintiff's complete and utter failure to show lack of probable cause and malicious, [malice] both of which are essential elements to an action for malicious prosecution.

The evidence which has been introduced thus far is to the contrary.

There were numerous witnesses that testified at this trial, not all of them were police officers or under police control.

First and foremost, perhaps, would be Mrs. Paula Graff, the mother of the decedent, who testified to an admission made in her presence by the plaintiff in this case, the defendant in the criminal case, Samuel Tito Williams.

Mr. William S. Perlman, who is an Assistant District Attorney in charge of the Investigation Unit of the Queens [Kings] County District Attorney's office in 1947, also testified to a conversation or to questions that he directed to the plaintiff in this action, Mr. Williams, in the presence of Mr. Williams and Mr. Williams' mother, I should say, wherein he asked him did you tell your mother that you killed Selma Graff, and his reply, in substance was, I didn't mean to do it. And he was also present, Mr. Perlman, at the time the defendant made a similar statement or similar admission, to the life [mother] of Selma Graff, and he so testified at the time of the criminal trial and that has been read into evidence.

Furthermore, the fact that the Circuit Court of Appeals held the confession to be coerced, your Honor, a reading of that opinion together with the concurring opinion of Judge Lumbard states merely that the circumstances by which they hold the confession coerced was the inordinate delay of 18 hours.

Motion to Dismiss

I think under two days [today's] standards we have no question the case would never have to take the route this case took to have the confession tossed out.

The opinion of Judge Smith cites numerous instances where older people, and perhaps even younger people, were subject to a less delay and a conviction had been reversed but the Court should bear in mind, that the Circuit Court of Appeals was reviewing this case in 1963, in light of the cases denied [decided] subsequent to 1947, when there was no requirement that a defendant—at least the Supreme Court had not made the pronouncement concerning a right of a defendant to be advised of his right to counsel and speedy hearing—so the plaintiff would have to show that the police officers knew the confession was false.

They have to show they knew the other testimony was false and they proceeded with a motive other than bringing a plaintiff to justice.

The Court: That is precisely so.

Mr. Walls: I feel it has been a complete failure of proof in that regard.

The Court: The only evidence we have, but it is evidence, is Mr. Williams' statements. If Mr. Williams' statements are to be believed by the jury, I think it is a question for the jury to decide. It would appear to me what Mr. Williams has said, the way he says he was treated, what was done to him, it seems to me those measure up to both the standards of reckless disregard of propriety and malice.

I think it is a question of his version of what happened to him, and I'm inclined to think it ought to go to the jury.

Mr. Walls: If I may refer to that point, your Honor, just raised in Mr. Williams' testimony.

He testified as I brought out on cross examination, of course as we all know had to be the case, at the original criminal proceeding held in 1948 in Queens County, County Court—

The Court: That in here?

Mr. Walls: Yes, your Honor, it is. That testimony appears starting in volume 2 and it is quite extensive. He went into elaborate details there.

Motion to Dismiss

The jury had the full benefit of watching Mr. Williams, of listening to him, of hearing him testify as to the time lag and his arraignment, the fact of the threats, the beatings, they also had the benefit of hearing other testimony.

They weighed all these things. This had been presented to the Grand Jury, and there was an indictment.

The jury, despite all these protestations of Mr. Williams, and the efforts of three appointed counsel, found him guilty.

The Court: I understand that.

Mr. Walls: As a matter of fact, they find him guilty recommending life imprisonment and the Court who sat there and listened refused to go along with that recommendation.

The Court: You mean they recommended life imprisonment?

Mr. Walls: They recommended life imprisonment and the judge, Judge Goldstein, Louis Goldstein of County Court, refused to follow that recommendation and sentenced Mr. Williams to death.

The Court: I see.

Mr. Walls: And first appeal was on that question and that was affirmed by the Court of Appeals of the State of New York and I believe Certiorari was either denied or the Supreme Court of the United States affirmed the right of a judge not to follow the recommendation of a jury and then they followed the other routes again.

But the Court of Appeals of the Second District found it was the delay [and] that the testimony of the plaintiff concerning his beatings were grossly exaggerated and that but for that—I don't want to refer too much to that opinion—it may be superfluous.

The Court: I'm going to submit the case to the jury and let them make a determination of it, of the issues so is there anything further, gentlemen?

Mr. Walls: My motion is denied or decision is reserved?

The Court: I don't think it matters because what happens in our practice a motion such as yours even if I submit it to the jury is regarded as being submitted—I would be in a position to reconsider it after the verdict has come in.

Charge to Jury

The defendant is the City of New York and it is charged with having acted maliciously through its police officers to prosecute Mr. Williams even though there was no probable cause to believe that he had committed the crime.

Defendant does not deny—that is the City of New York—that the police officers initiated the prosecution of Mr. Williams, but he contends the officers acted in good faith and on reasonable grounds.

In order to recover, the plaintiff must prove that at the time the prosecution was initiated defendant's officers did not have probable cause to believe that Mr. Williams was guilty of murder and that they acted maliciously in initiating the prosecution.

Whether probable cause existed depends on whether a reasonably prudent person would have believed defendant—plaintiff—guilty of the crime charged on the basis of the facts which the officers knew, or reasonably believed at the time prosecution was initiated.

The fact that the police officers personally believed plaintiff was guilty is not enough if a reasonably prudent person would not have believed he was guilty.

On the other hand, the fact plaintiff was convicted by a jury is strong evidence that there was probable cause for the police officers to believe that he was guilty.

That evidence can only be overcome by a showing that the conviction was obtained on the basis of fraudulent evidence or by other means.

The Court of Appeals for this Circuit has held that Mr. Williams' confession was obtained in a manner which is under present legal standards constitutionally impermissible.

That fact alone, however, is not sufficient to establish that the conviction was obtained fraudulently.

However, the Court of Appeals has also found that the confession was the sole basis of Mr. Williams' conviction and if you find that the confession was elicited in a manner described by Mr. Williams and if you find that the jury which found Mr. Williams guilty did so because they were led by false or fraudulent

Charge to Jury

testimony—which was given or negotiated by defendant officers—to believe the confession was obtained in a different manner, then you may find the conviction was obtained by fraudulent and corrupt means.

Now, I come to the question of malice. A prosecution is negotiated maliciously if it is negotiated in reckless disregard of rights of the person accused.

If you find that at the time the prosecution was negotiated the defendant's officers did not have probable cause for believing that Mr. Williams was guilty of murder, then you may—but you are not required to—infer from that fact alone they acted maliciously.

If you find that the defendant's officers did not act maliciously your verdict must be for the defendant, even though you find that the officers did not have probable cause to believe that Mr. Williams was guilty.

If you find that the plaintiff has proved that the police officers acted maliciously and without probable cause your verdict will be for the plaintiff and you will proceed to consider the question of damages.

Now, the fact that I charge you on the law of damages must not be taken as an indication that your verdict should be for the plaintiff.

It is for you to determine whether he has proved both lack of probable cause and malice.

Both things you have to find in order to find for the plaintiff. If you find that he has not proved both you need go no further. Your verdict will be for the defendant.

Only if you find that he has proved both malice and lack of probable cause will you consider the measure of damages.

Now, if you find for the plaintiff, he is entitled to recover for the actual damage directly sustained as a result of the criminal prosecution. You will award him such amount as in the exercise of your good judgment and common sense you find is fair and just compensation for the injury to the plaintiff's reputation, loss of earnings, humiliation, and mental anguish resulting from the

Charge to Jury

criminal prosecution and 16 years in prison, two years of which was spent on the death row, and the expenses incurred by the plaintiff, the defendant, in criminal prosecution.

The damages I discussed with you thus far are called compensatory because they are intended to compensate defendant for the injury done for the criminal prosecution.

In addition you may allow him punitive damages. Punitive damages are allowed to punish a defendant for his malicious or reckless act and thus to deter others from commissions of like offenses.

To find a verdict for the plaintiff you must as I previously stated, find that the defendant acted maliciously but that finding does not require that you award the plaintiff punitive damages.

If you find that the degree of defendant's malice or recklessness warrants your doing so, you may award the plaintiff punitive damages but if you further find that the defendant mistakenly, but in good faith, believed probable cause you must take that fact into consideration in exercising your discretion as to the allowance of punitive damages for the amount of such damages if you decide to allow.

There is no exact rule by which to determine the amount of punitive damages. The amount you fix as punitive damages need bear no particular ratio or relationship to the amount you award as compensatory damages.

You may fix such an amount as you find in your sound judgment and discretion based on all the facts before you that you feel will serve to punish the defendant and deter others from the commission of a like offense.

* * *

The Court: Do you have any exceptions?

Mr. Schwartz: No.

Mr. Wallis: No, I have no exceptions your Honor.

The Court: All right.

* * *

(At 5:15 p.m., the jury returned to the courtroom.)

(Jury roll called—all present.)

Charge to Jury

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: We have, your Honor.

The Clerk: How do you find?

The Foreman: We find for the plaintiff.

The Clerk: In the sum of what?

Mr. Foreman: Hundred twenty thousand dollars.

The Court: You have to specify.

The Foreman: \$40,000 compensatory damages and \$80,000 punitive damages.

The Clerk: Members of the jury, listen to your verdict as it stands recorded. You say you find a verdict for the plaintiff in the sum of hundred twenty thousand dollars, so say you all.

(Each juror, upon being asked by the Clerk, "Is that your verdict?", answered in the affirmative.)

* * *

Mr. Walls: Your Honor, at this time the City of New York, defendant, moves to set aside the verdict as being against the weight of the credible evidence and as being contrary to law and the facts in this case.

I specifically refer to not only the verdict in its total, the verdict for the plaintiff, but the fact they even found punitive damages. There was no testimony but that the plaintiff—the compensable damages—he was only earning \$35 a week and wasn't working at the time he was arrested and had been sickly and that is why he wasn't working.

As far as the punitive damages are concerned, there was no testimony presented by the plaintiff which would indicate that there was malice in this prosecution back in 1948. The entire record was admitted into evidence and I wish it noted for the record at this time that the jury never called for that exhibit, the entire trial transcript was never submitted to the jury.

In the course of that initial trial, the very trial jury that convicted the plaintiff in this action has opportunity to pass upon the manner in which the confession was obtained, length of time he had been held, the other statements given the Assistant District Attorney, and the testimony of the mother, the son—the

Charge to Jury

brother of the deceased—the various doctors who testified, the various police officers and the Assistant District Attorney.

The Court: Let me suggest, Mr. Walls, you have ten days to formalize that motion and I would suggest that what you do is file a formal motion with supporting affidavit—you have to do it within ten days. If you feel you need more time than that to file your memorandum in support then I will give you that much additional time but your motion has to be formalized within the ten days and if you do that that would be fine.

Whatever time I give you to file a memorandum in excess of the ten days I will—well, let me put it this way.

I'll give the plaintiff a week to respond.

* * *

Opinion

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Index No. 66 Civ. 2356

SAMUEL TITO WILLIAMS,

Plaintiff,

against

THE CITY OF NEW YORK,

Defendant.

Harry H. Lipsig, Esq., of New York City for Plaintiff; Harry R. Schwartz, Esq. of counsel.

Norman Redlich, Esq., Corporation Counsel, City of New York, for defendant; William J. Walls, Esq. of counsel.

CARTER, District Judge

MICROFILM

Nov. 21, 1973

The City of New York has moved to set aside the jury's verdict in this action on the grounds that plaintiff "failed to prove a prima facie case of malicious prosecution;" that he failed to prove malice or a lack of probable cause; and that he failed to rebut the presumption of probable cause created by his indictment and conviction. The City also challenges the award of punitive damages and requests, as an alternative to the entry of judgment for defendant, that a new trial be ordered because of allegedly prejudicial remarks made by plaintiff's counsel.

The plaintiff testified at trial that he was picked up by New York City policemen for no apparent reason (Tr., pp. 42-3)¹,

¹ Citations to "Tr." are to the trial transcript in this proceeding; citations to "Record" are to the trial transcript in the criminal trial.

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that he was questioned about various crimes (Tr., p. 44); that he was taken before several people—presumably witnesses or victims of various crimes—none of whom identified him (Tr. pp. 44 and 45); that after extended questioning and physical abuse he prepared a false written “confession” of murder, the details of the crime having been provided by police officers; that the “confession” was given as a result of the officers’ threats against his life; that as a further result of the alleged threats and physical torture he repeated and confirmed the details of the “confession” to a district attorney; and that as a consequence he was convicted of murder in 1948 and suffered a sixteen-and-one-half-year incarceration, two years of which were spent on “death row”, and a consequent loss of income and earning capacity. Mr. Williams also testified that the only witness to the murder stated upon being asked to identify him that the murderer was not Mr. Williams but “a white man”. The conviction was subsequently overturned on the ground that it was based entirely upon a confession which was unlawfully obtained. The indictment was subsequently dismissed.

Mr. Williams admitted on cross-examination that he had fully reported his version of the facts to the jury which convicted him. He further confirmed that the Assistant District Attorney who took his confession knew that he had been beaten (Tr., p. 92) and that the judge before whom he appeared two or three days after his “confession” ordered photographs taken because “[h]e noticed my eyes were all black.” (Tr., p. 79.)

Although the reporter neglected to transcribe those portions of the testimony read by counsel from the trial record, I ruled:

“[t]he only thing counsel will be allowed to—and permitted to—read are those matters which go to the issues before the jury and that is the question of malicious prosecution.

“The question . . . as to whether the confession was or was not coerced is not in issue.

“The issue that is before the jury is whether Mr. Williams was in fact maliciously prosecuted. That is the

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issue which you brought later and anything that goes to that in the transcript Mr. Walls will be permitted to read into the record." (Tr., p. 111).

The transcript sets forth those record citations which were read to the jury pursuant to this ruling.

The transcript records that Mr. Walls read from Mr. William Perlman's testimony (Assistant District Attorney), R. 535, 525 folio 605; R. 549, folio 1647; R. 548, folio 1643; R. 551, folios 1652 and 1653; R. 552, folio 1656; R. 553, folio 1657; R. 554, folio 1616; R. 555, folios 1664 and 1666; R. 558, folio 1672; R. 557, folio 77 [sic]. Then he read from testimony of Paula Graff, R. 53, folio 157; R. 58, folio 172; R. 59, folio 175-6 (Tr. 134-138); Mr. Schwartz read from Mr. Perlman's testimony, R. 569, 570, R. 56, R. 58; Mr. Donald Graff's testimony, R. 85, R. 98, R. 100, R. 103, R. 105, R. 107. Mr. Walls then read from Donald Graff's testimony, R. 119, folio 357; from the testimony of Dr. Cordiney, R. 145, folio 435, 437; R. 147, folio 440; and, finally, Mr. Schwartz read from the latter witness' testimony, R. 148 (Tr. 139A-144).

All of this testimony, pursuant to my ruling, related to the question of malicious prosecution. The entire record was submitted in evidence as Defendant's Exhibit A, and counsel for the City seems to have been under the impression that the jury could have examined any part of the record, excluding briefs of counsel, upon demand.² The jury did not make such a demand, however, and were aware of nothing beyond the testimony read to them by counsel, which were, in accord with my ruling, the only matters in the prior proceedings properly before the jury in the instant case.

In any event, the defense did present the following facts to the Jury: The Assistant District Attorney (Perlman) who took plaintiff's statement and went with him to the Graff home for

² In fact, the arguments presented in the City's affidavit in support of the motion rely not upon the Record of this trial, but upon the entire history of civil and criminal litigation affecting Mr. Williams.

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a "reenactment" of the crime, testified regarding plaintiff's physical condition at that time:

"He appeared calm. He was cool—he was just as he is sitting there right now. He talked and answered questions very freely, friendly to me. I was particularly friendly and kind to him. I was there to take a statement. His eye, the left eye, as I said was discolored in the corner right on the eyelid down there.

"Q. You are pointing to the side of your nose now?

A. Yes.

"Q. Go ahead. I want it for the record that you are pointing to the bridge of your nose under the eye?

A. Yes, that is right.

"Q. Go ahead. A. There may have been a slight swelling in here or a slight swelling on the cheek; whether it is the cheek bone or not—but from where I sit now, that left eye looks just as if it was swollen now, just as swollen now as it was then. I was close to him. I had a talk with him. I watched him and I looked at him.

"Q. And that is the observation you then made of his eyes? A. That is correct. (R. 553)

* * *

"As we walked along, I had observed him with a slight limp.

"Q. You mean during the reenactment? A. During the walking part of the reenactment, at times he walked, well, occasionally, a slight limp of his left leg—no, perhaps—yes, his left leg, and I asked him if anything was wrong with him, why did he limp, and he said 'Nothing,' but then he said to me that he was afflicted with rheumatic fever and that it catches him in the left leg. He gave me that. I had observed in his presence on his face a slight discoloration of the left eye, right in the corner, a slight discoloration, and he normally as you can see, has high cheek bones. I could not make out whether it is a swelling or not. Photographs were taken." (R. 551)

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Perlman recounted a conversation with plaintiff in the presence of plaintiff's mother:

"He was away from the door, two chairs up against the wall. And as I came in there, both of them, if they had been talking, they were not talking when I came in, and I said to him, 'Samuel, did you tell your mother what you did?'"

"He put his head down. I said, 'Samuel, did you tell your mother that you killed the Graff girl?' And he just put his head down. And I repeated for the third time, 'Samuel, did you tell your mother that you hit the Graff girl?'"

"And he said, 'I didn't mean it. It was intentional.' I emphasize the word 'intentional.' That is the word he used. It stuck with me. It is in my memory now.

* * *

"(Mr. Healy and Mr. McCabe confer with the Court.)

"The Witness: May I proceed?

Mr. McCabe: Go ahead.

The Witness: 'I didn't mean to do it.'

"Q. I didn't get that answer, please, completely, Mr. Perlman. A. 'It was intentional. I didn't mean to do it.' " (R. 555-6)

The victim's mother testified regarding an encounter with Williams during the "reenactment":

"I said to him when he walked out, when he was ready—I didn't say nothing. When he walked out already I just asked him one word, I said to him, 'Why did you kill her?'"

"Q. Did he answer you, Mrs. Graff? A. He said, 'I didn't mean it.' " (R. 59)

Plaintiff's counsel read portions of the testimony of Donald Graff, the only witness to the murder, and defense counsel intro-

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duced testimony of the Williams' doctor indicating the unreliability of his recollection.

It was revealed to this jury that on the first day of Donald Graff's testimony he repeated his belief that the killer was a white man and contradicted the prosecution's version of the events in other respects. (He later retracted that testimony after "conversations" with an uncle and, possibly, with police and/or prosecutors.)

The defendant offered no witness who had any direct knowledge of the events leading to Mr. Williams' conviction, nor did it offer any evidence, apart from the plaintiff's alleged statements to his mother and to Mr. Graff, that it had probable cause to believe Williams guilty. There is no pre-"confession" evidence in this record which would have served as justification for linking Williams to the Graff murder. The arrest of Williams remains unexplained.

Williams' testimony does seem to set out a *prima facie* case of malicious prosecution, for, by his account, defendant's police officers obtained a confession from him by physical torture and threats against his life and forced him to repeat the confession to an Assistant District Attorney in order that he might be prosecuted. Defense counsel's attempt to show that the prosecutor was undeceived by this process serves no purpose. It is true that

"[i]f a person disclose[s] fairly and truthfully to an officer, whose duty it is to prosecute crime, all matters within his knowledge, which as a man of ordinary intelligence he is bound to suppose would have a material bearing upon the question of the innocence or guilt of the persons suspected, and leaves it to the prosecutor to act entirely upon his own judgment and responsibility as a public officer, and does no more, he cannot be held answerable in an action for malicious prosecution . . . " *Hopkinson v. Lehigh Valley R. Co.*, 249 N. Y. 296, 300-301, 164 N. E. 104, 106 (1928).

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See, also, 54 CJS § 17. However, the rule that a good faith report to a prosecutor does not constitute malicious prosecution, even where that prosecutor erroneously proceeds against the accused, should not protect one who proceeds maliciously or with gross disregard for the rights of the accused simply because the prosecutor was also malicious and/or negligent.

“The want of probable cause does not mean the want of any cause, but the want of any reasonable cause, such as would persuade a man of ordinary care and prudence to believe in the truth of the charge.” *Thompson v. Fifth Avenue Bank of New York*, 247 A. D. 392, 397, 287 N. Y. S. 480 (1st Dept. 1936), citing *Burt v. Smith*, 181 N. Y. 1, 5, 73 N. E. 495, 496.

The secondary “confessions” upon which the City seems to rely as probable cause are ambiguous.³ In one instance Mr. Williams is alleged to have answered the questions “Did you tell your mother what you did?” and “Did you tell your mother that you hit the Graff girl?” by saying “I didn’t mean it. It was intentional.” The Assistant District Attorney assumed that Mr. Williams meant that he had killed the girl unintentionally, but his words—inconsistent on their face—are subject to other interpretations. The alleged statement of Mrs. Graff is similarly ambiguous. In answer to the question “Why did you kill her?” Mr. Williams is alleged to have said again, “I didn’t mean it.” (The word “it” could conceivably refer to the confession.)

³ The affidavit of William J. Walls in support of a motion for judgment n.o.v. states, at p. 5, that

“Physical or mental coercion . . . do not in and of themselves establish facts from which malice can be inferred, when as here, witnesses other than the police testified as to the plaintiff’s admission of guilt. The admissions here referred to were those made to Paula Graff . . . and Assistant District Attorney Perlman.”

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Similarly, Mr. Walls argued as follows in his summation:

"What I am here to tell you is that based upon the testimony at trial and it is all in evidence, the testimony of witnesses such as Paula Graff, the mother of the murdered girl and state-men' Mr. Williams made in the presence of his own mother admitting that he committed the crime, that this was sufficient grounds for the City of New York . . ." Tr. 157.

The record indicates—and the jury may have believed—that these statements were made only after an unexplained arrest, protracted interrogation, physical torture and threats against the life of the accused. In this context it seems to me that the jury might reasonably have concluded that these two brief and ambiguous statements did not give defendant reasonable cause to proceed with the prosecution.

The question of whether or not the presumptions raised by Mr. Williams' indictment and conviction were successfully rebutted is difficult because of lack of relevant evidence. In *Carney v. Schelling*, 234 App. Div. 333, 255 N. Y. S. 118 (1st Dept. 1932), a verdict for plaintiff was overturned because the judge refused to charge that the defendant should prevail unless the jury believed that he testified falsely before the grand jury which returned an indictment against the plaintiff or withheld facts from the grand jury. The defendant here neither claims that improper instructions were given to the jury nor that appropriate instructions were refused.

The rule regarding the presumptions created by subsequent indictment or conviction has been stated as follows:

" . . . a grand jury ought to find an indictment when all the evidence before them is such as in their judgment would if unexplained warrant a conviction by the trial jury. An indictment, therefore, when brought into a civil case, necessarily implies, until the contrary appears, that there was such evidence. A similar provision relates to the duty of the committing magistrate. * * * If from the examination before him, there is sufficient cause to believe the defendant guilty of the crime charged, he

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must so certify and hold the prisoner. The holding of the accused by a magistrate after an examination into the facts is *prima facie* evidence of probable cause for the prosecution. * * * An indictment by the grand jury is also *prima facie* evidence of probable cause. * * *

"The plaintiff in his malicious prosecution case must, therefore, meet this *prima facie* evidence of probable cause by showing that the defendant did not make a full and complete statement of the facts either to the magistrate or to the District Attorney; has misrepresented or falsified the evidence, or else has kept back information or facts which might have affected the result. [Citations omitted]." *Hopkinson v. Lehigh Valley R. Co.*, *supra*, at 299-300.

Thus, it has been stated that where the defendant's complaint has led to an indictment, the indictment

"in itself constitutes *prima facie* evidence of probable cause which may be overcome only by proof that there was not a full and complete statement of facts to the Grand Jury, or that defendant falsified the evidence or kept back information of facts which might have affected the result. [Citations omitted.]" *Eberhardt v. Consolidated Edison Co. of New York*, 1 A. D. 2d 1001, 151 N. Y. S. 2d 823, 824 (1st Dept. 1956).

The *Hopkinson* case suggests that a similar presumption attaches where the defendant's report to the prosecutor leads to an investigation and presentment to a grand jury, and that this presumption is only overcome by a showing that the prosecutor was misled. This rule should, however, have no application if the prosecutor is also found to have been guilty of malice, see *supra*, page 9.

Although plaintiff did not *prove* that the defendant's officers misled the prosecutor, the grand jury or the jury (his counsel did not in fact address the issue), it may well be that a jury which

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believed that Williams was prosecuted and convicted on the basis of a confession which was extracted by physical torture might reasonably infer that the prosecutor was misled or implicated, and that the grand jury and trial jury were deceived as to the circumstances of the confession. In *Caminito v. City of New York*, 25 A. D. 2d 848, 269 N. Y. S. 2d 826 (2d Dept. 1966), *aff'd without opinion*, 19 N. Y. 2d 931, 281 N. Y. S. 2d 338 (1967), a summary judgment for plaintiff was reversed in a similar case. The court below had found that:

"Defendant, by its police officers, by the 'improper', 'fraudulent', 'undue', and 'unlawful' means, coerced plaintiff and extorted from him a confession which the United States Court of Appeals has found, in effect, to be a forgery. Defendant, by its employees, with knowledge of its invalidity, caused to be exhibited to the Grand Jury and the trial jury the void confession which was the sole and proximate cause of plaintiff's indictment and conviction. It may therefore be said as a matter of law that the presumption of probable cause normally attaching to an indictment and conviction has in this instance been completely nullified." 45 Misc. 2d 241, 251, 256 N. Y. S. 2d 670, 680-81 (Sup. Ct. 1965).

In reversing, the Appellate Division said:

"In an action for malicious prosecution an indictment by a grand jury constitutes *prima facie* evidence of probable cause which may be overcome only by proof that a complete or truthful disclosure was not made to the grand jury * * * and a conviction establishes *prima facie* probable cause for the prosecution unless plaintiff can show that the judgment was obtained by fraud, perjury, conspiracy or other undue means * * *. Plaintiff has not made any such requisite showing. The indictment was upheld by the Court of Appeals. The conviction was obtained after trial at which all the facts surrounding the obtaining of the confession were revealed. A determination, 14 years after judgment, that plaintiff's constitutional

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rights were violated, is insufficient to expose defendant to an action for malicious prosecution for a proceeding which was properly conducted with probable cause under the then-existing State law." 25 A. D. 2d, at 849, 269 N. Y. S. 2d at 869.

It can be argued that the jury properly found, on the record before it, that Mr. Williams suffered not only a violation of constitutional rights, but also that his conviction was obtained by undue means and without probable cause. *Caminito* dealt with an undisputed record, upon a motion for summary judgment, and did not include allegations of threats against the life of the accused or of physical torture. Although the court found that a conviction obtained on the basis of a confession which was the result of extended interrogation, during which the defendant was kept incommunicado and was confronted with individuals who pretended to identify him as the perpetrator of the crime in question, was not obtained by undue means, it can be argued that this jury was justified in finding that a conviction obtained on the basis of a confession which was the product of physical torture and threats against the life of the defendant was obtained by "undue" or "corrupt" means. There is a great difference between the facts which were stipulated in *Caminito* and the facts which the jury might reasonably have found on this record.

A jury may, but need not, infer malice from a finding of a lack of probable cause to prosecute and, given the brutality of the behavior which Williams ascribed to the police, a jury which believed his story and found no probable cause would clearly be justified in finding malice.

While punitive damages are only permitted against public bodies in extreme cases, the facts which the jury must have found in order to return a judgment for plaintiff are clearly extreme.

Plaintiff's counsel did make questionable comments during summation and was admonished by the court for his remarks, and ordered to desist, and he did so. While inflammatory, the remarks did not approach the level of impropriety, on the basis of which a new trial must be granted.

CONCLUSION

In sum, I find there is a sufficient basis in this record for the jury's verdict. The City's motion, therefore, is in all respects denied.

So Ordered.

Dated: New York, New York
November 14, 1973

ROBERT L. CARTER
Robert L. Carter
U. S. D. J.

STATE OF NEW YORK }
COUNTY OF NEW YORK }

JAMES J. BOLAND

Being duly sworn, says that on 8 day of May 1976
at No. 100 Church St in the Borough of Man in New York City, he served a copy
of the annexed Appellants Appending upon Harry Lipsitz Esq.,
the Attorney for the Putt - Appellee in the within entitled action, by delivering
a copy of the same to a person in charge of said Attorney's office, and leaving the same with him.

Sworn to before me, this 8

day of May

JOHN CALIA

Notary Public, State of New York

No. 41 5573935 Queens County

Certificate Filed in New York County
Commission Expires March 30, 1976

John Calia

James J. Boland